In The

Supreme Court of the United States

October Term, 1963

No. 751

F. J. COSMARK, JOHN C. MARTIN and MELVIN D. PATTERSON, Individually, and as Representatives of a Class,

Petitioners

v.

STRUTHERS WELLS CORPORATION; INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS OF AMERICA (A.F.L.-C.I.O.); LOCAL LODGE 636 Thereof; RUSSELL A. GRAHAM, Individually; LEE A. REISINGER, DONALD E. CHAPEL and HARRY A. WILES, Individually, and as Representatives of a Class,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

GEORGE J. BARCO,
YOLANDA G. BARCO,
BARCO AND BARCO,
Attorneys for Petitioners

357 Center Street,
Meadville, Pennsylvania.

Murrelle Printing Company, Law Printers, 201-203 Lockhart Street, Sayre, Pa.

TABLE OF CONTENTS

	Page
Petition for Writ of Certiorari to the Supreme Court of Pennsylvania:	
Petition	1
Opinions Below	2
Jurisdiction	2
Questions Presented	3
Statutes and Constitutional Provision Involved	4
Statement of the Case	4
How Federal Question Is Presented	8
Reasons for Granting the Writ:	
(A) The importance of the question	9
(B) The Pennsylvania decision is not in accord with the Labor Management Relations Act	16
Conclusion	20
Appendix A—Statutes and Constitutional Provision Involved	21
Appendix B—Opinion of the Supreme Court of Pennsylvania	26
Appendix C—Complaint	36
Plaintiffs' Exhibit A	79
Plaintiffs' Exhibit B	81
Plaintiffs' Exhibit D	84
Plaintiffs' Exhibit E	86
Plaintiffs' Exhibit G	90
Plaintiffs' Exhibit H	92
Appendix D—Preliminary Objections filed by Struthers Wells Corporation	95
Appendix E—Preliminary Objections filed by various designated union Defendants	100

TABLE OF AUTHORITIES

CASES:

Association of Westinghouse Salaried Employees v. Westinghouse Electric Corporation, 348 U.S. 437, 444, 75 S. Ct. 489, 492 (1955) 19

Baker v. Shopmen's Local Union No. 755, 403 Pa. 31 (1961) 17

Britt v. Trailmobile Company, 179 F. 2d 569 (1950), cert. denied, 340 U.S. 820 (1950) 12

Brotherhood of Railroad Trainmen v. Howard, 343 U.S. 768, 72 S. Ct. 1022 (1952) 12

Cortez v. Ford Motor Company, 349 Mich. 108, 84 N.W. 2d 523 (1957) 12, 18

Falsetti v. Local Union No. 2026, U.M.W.A., 400 Pa. 145, 468 (1960) 18

Ford Motor Company v. Huffman, 345 U.S. 330, 73 S. Ct. 681 (1953) 11

Hardcastle v. Western Greyhound Lines, 303 F. 2d 182 (1962) 12

Holman v. Industrial Stamping and Manufacturing Company, 344 Mich. 235, 74 N.W. 2d 322 (1955) 12, 13

Hughes Tool Company v. N.L.R.B., 147 F. 2d 69 (C.C.A. 5th, 1945) 13

J. I. Case Company v. National Labor Relations Board, 321 U.S. 332, 64 S. Ct. 576 (1944) 11

Intermountain Equipment Company v. National Labor Relations Board, 239 F. 2d 480, 483 (C.C.A. 9th, 1956) 18

International Association of Machinists v. Gonzales, 357 U.S. 617, 78 S. Ct. 923 (1958) 17

Jorgensen v. Pennsylvania Railroad Company, 25 N. J. 541, 138 A. 2d 24 (1958) 18

Larus and Brother Company, 62 N.L.R.B. 1075 (1945) 14

Local 100 of the United Association of Journeymen and Apprentices v. Borden, 373 U.S. 690, 83 S. Ct. 1423 (1963) 9, 15

Miranda Fuel Company, 140 N.L.R.B. No. 7, Dec. 19, 1962 ..... 13, 14

National Labor Relations Board v. Intracoastal Terminal, Inc., 286 F. 2d 954, 958 (C.C.A. 5th, 1961) 18

Parker v. Borock, 5 N.Y. 2d 156, 156 N.E. 2d 297 (1957) 18

Radio Officers Union v. National Labor Relations Board, 347 U.S. 17, 74 S. Ct. 323 (1954) 18

San Diego Building Trades Council v. Garmon, 359 U.S. 236, 79 S. Ct. 773 (1959) 9, 16

Smith v. Evening News Association, 371 U.S. 195, 83 S. Ct. 267 (1962) 17, 19

Smith v. Pittsburgh Gauge and Supply Company, 412 Pa. 171, 178, 194 A. 2d 181 (1963) 17

Steele v. Louisville and N. R. Company, 323 U.S. 192, 65 S. Ct. 266 (1944) 11, 12, 15

Syres v. Oil Workers International Union, Local No. 23, 350 U.S. 892, 76 S. Ct. 152 (1956) 11, 15

Tunstall v. Brotherhood of Locomotive Firemen and Enginemen, 323 U.S. 210, 65 S. Ct. 235 (1944) 12, 15

United Construction Workers v. Laburnum Construction Corporation, 347 U.S. 656, 74 S. Ct. 833 (1954) 17

Whitfield v. United Steelworkers of America, Local No. 2708 and others, 263 F. 2d 546 (1959), cert. denied, 360 U.S. 902, 79 S. Ct. 1285 (1959) 12

Wallace Corporation v. National Labor Relations Board, 323 U.S. 248, 65 S. Ct. 328 (1944) 13

STATUTES:

Labor Management Relations Act of 1947, 61 Stat. 136 et seq.:
Sec. 7, 29 U.S.C.A. 157 ..... 4, 10, 16, 21
Sec. 8(a), 29 U.S.C.A. 158(a) ... 4, 10, 13, 14, 15, 16, 22
Sec. 8(b), 29 U.S.C.A. 158(b) 4, 13, 14, 15, 22
Sec. 9(a), 29 U.S.C.A. 159(a) 4, 14, 24
Sec. 10(a), 29 U.S.C.A. 160(a) 4, 24
Sec. 10(c), 29 U.S.C.A. 160(c) 4, 24

CONSTITUTION:

Constitution of the United States, Articles VI, Clause 2 ..... 4, 21

In The
SUPREME COURT OF THE UNITED STATES

October Term, 1963

No.

F. J. Cosmark, John C. Martin and Melvin D. Patterson, Individually; and as Representatives of a Class,

Petitioners

v.

Struthers Wells Corporation; International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers of America (A.F.L.-C.I.O.); Local Lodge 635 Thereof; Russell A. Graham, Individually; Lee A. Reisinger, Donald E. Chapel and Harry A. Wiles, Individually, and as Representatives of a Class,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

F. J. Cosmark, John C. Martin, and Melvin D. Patterson, individually, and as representatives of a class, respectfully pray that a writ of certiorari issue to review the judgment of the Supreme Court of Pennsylvania, entered in this cause on October 17, 1963.

OPINIONS BELOW

The opinion rendered by the Supreme Court of Pennsylvania, on October 17, 1963, affirming the order of the Court of Common Pleas of Crawford County, Pennsylvania, dismissing the complaint, is reported in 412 Pa. 211, 194 A. 2d 325 (1963), and is printed in Appendix B, pages 26 to 35.

JURISDICTION

The final judgment of the Supreme Court of Pennsylvania was entered on October 17, 1963, and the jurisdiction of this Court is invoked under 28 U.S.C. 1257(3).

QUESTIONS PRESENTED

Does a state court have jurisdiction to award compensatory and punitive damages and specific relief in an action brought by members of a labor union against other members of the labor union, the labor union and the employer, in an action based upon the plaintiffs' being wrongfully deprived of their seniority rights in violation of an existing agreement, and in the negotiation of a subsequent agreement, and where the plaintiffs claimed that the labor union had breached its duty to fairly represent them in refusing to process grievances in connection with the alleged violations under the existing agreement and in the negotiation of the subsequent agreement?

Were the conduct of the labor union and the employer in the circumstances and the rights the plaintiffs were seeking to enforce subject to the Labor Management Relations Act of 1947, and to the exclusive jurisdiction of the Federal tribunals under the Act?

STATUTES AND CONSTITUTIONAL PROVISION INVOLVED

The constitutional provision involved is the Supremacy Clause, Article VI, Clause 2, set forth in Appendix A, page 21.

The statutory provisions involved are Sections 7, 8(a), 8(b), 9(a), 10(a) and 10(c) of the Labor Management Relations Act of 1947, 61 Stat. 136 et seq.; 29 U.S.C.A. 157, 158(a), 158(b), 159(a), 160(a) and 160(c), set forth in Appendix A, pages 21 to 25.[1]

STATEMENT OF THE CASE.

An action in equity was instituted by Petitioners above-named, as plaintiffs, individually, and as representatives of a class of fellow workers referred to as "large employees," against the Respondents, Struthers Wells Corporation; International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, of America (A.F.L.-C.I.O.); Local Lodge 636 thereof; Rus-

[1] It may be noted that the 1959 amendments to Sections 8(a) and 8(b) of the Labor Management Relations Act of 1947, which became effective 60 days after September 14, 1959, did not change the provisions in any manner relevant to the matter presented, and, in any case, they do not apply because the cause of action arose before the said effective date.

sell A. Graham, individually; Lee A. Reisinger, Donald E. Chapel and Harry A. Wiles, individually, and as representatives of a class, as defendants.

The complaint filed sets forth in detail the occurrences giving rise to the action, and the pertinent facts here may be summarized as follows. The plaintiff forge employees were employed by the employer in its forge division, which was located in the same community near the iron works division operated by the employer (38-39). Different, but related, work was performed in each division; but the employees of both—forge employees and iron works employees—constituted one unit for collective bargaining purposes, the union defendants being the statutory collective bargaining agent for the unit (38). A separate seniority list had been established for each of the divisions in the unit since 1945 under various successive agreements, including the 1957 agreement executed June 19, 1957, which was to expire on May 31, 1959 (41).

Following a request by the employer in early August, 1957, that the seniority lists be combined, and without any formal action being taken by the union with relation thereto, the employer began in that month the transferring of certain machinery and work, which for many years had been located and performed at the forge division, to the iron works division (46, 47). The employer hired new employees to perform the transferred work—the new employees being designated as iron works employees—and laid off forge employees who had been performing the work (47). The transfers continued with the increase of the complement of the iron works employees, and the decrease of the forge employees; and by September, 1958, the number of iron works employees had increased

from 150 to 215, while the number of forge employees had decreased from 108 to 32 (39, 40, 59). The work transfer continued until April 1, 1959, when no operations were carried on at the forge division, with all of the forge employees having been furloughed, while, at the same time, the machines and orders customarily worked by them, were being serviced at the iron works division by the iron works employees, including those employed since August, 1957 (63).

The complaint details the conduct of the union and union leadership with relation to the work transfer, alleged to be in violation of the existing 1957 agreement, including the continued refusal of the union leadership to process a written grievance concerning the work transfer without recognition of the seniority rights of the forge employees (54-57); the hostile and arbitrary attitude manifested against the forge employees (48, 49, 56-59); and the discriminatory treatment accorded to them (48-49). The complaint avers that this conduct was motivated by the desire of the iron works employees including the union official in charge, who was an iron works employee, to further their interest as against the interest of the forge employees (48-49).

During the period of the work transfer the employer continued to urge the union to agree upon a combined seniority list, although it also repeatedly assured the forge employees of continued employment for the term of the 1957 agreement, and represented to those with greater seniority that employment for them would continue for an indefinite future period irrespective of any action of the defendant union on the seniority list (51-52).

Statement of the Case

On January 19, 1959, the employer presented to the union a proposal to establish a new combined seniority list under which the forge employees would be placed at the bottom of the iron works employees' list, although the forge employees would retain credit for length of service for vacation and other benefits (60). Thereafter, the employer urged the adoption of this proposal; and in early April, 1959, when the employer and union began negotiating the new collective bargaining agreement, the employer's representatives stated to the union representatives that unless the seniority issue was first disposed of, in accordance with the employer's proposal, that it would refuse to further negotiate and would bring to a close all operations (63).

The described conduct of the union and union leadership culminated in its adopting a consolidation plan on May 2, 1959, under which, from May 1, 1959, the unit would have a general seniority list, in which the seniority of all forge employees would begin as of May 1, 1959 (63-64).

The forge employees expended various efforts to have the grievance concerning their seniority rights processed in accordance with the 1957 agreement through the defendant local union, and later, the defendant international (54-59). Thereafter, they instituted proceedings with the international union for an investigation of all of the various activities of the local union, culminating in the action on seniority taken May 2, 1959 (64-66); but no final decision was ever reported by the international, as promised, although the union defendants later executed the 1959 agreement, effective for the period from June 1, 1959, through July 31, 1960, in which the seniority plan

adopted May 2, 1959, and the subject of the complaint to the international, was formally put into effect (66). The plaintiffs alleged that they had exhausted all remedies available to them under the constitution and bylaws of the defendant unions, averring the specific facts with relation thereto (64-69).

The forge employees continued to be laid off from April 1, 1959, when all operations at the forge division had ceased; and in the action claimed irreparable loss for loss of wages; loss of vacation pay; loss of rights on reinstatement, and advancement; and loss of accumulated severance pay rights, with relation to which they asked for an adjudication concerning their seniority rights, for damages, and for specific and other appropriate relief (63, 70-71, 76-77).

Preliminary objections were filed by the union and employer raising issues on jurisdiction, demurrer, misjoinder of causes of action, motion to strike and motion for a more specific complaint. On December 26, 1961, the lower court entered an order sustaining the preliminary objections to the jurisdiction of the court and in the nature of a demurrer to the complaint, and dismissed the action (29, 158a). An appeal was taken from this order by the forge employees to the Supreme Court of Pennsylvania, following which it entered the final judgment with relation to which this Petition is presented (35).

HOW FEDERAL QUESTION IS PRESENTED

In the preliminary objection to jurisdiction, the employer and union challenged the state court's jurisdiction

(95, 100); and the lower court sustained this objection, concluding "that jurisdiction in this matter is in the National Labor Relations Board, and that the state courts must yield thereto." The lower court also sustained the preliminary objection in the nature of a demurrer on the ground that the complaint did not state a cause of action against the defendants, because the union action culminating in the 1959 agreement, was authorized by majority vote.[1]

The Supreme Court of Pennsylvania affirmed the order of the lower court dismissing the complaint, ruling, however, only on the jurisdictional issue raised, and holding on the authority of *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 79 S. Ct. 773 (1959), and *Local 100 of the United Association of Journeymen and Apprentices v. Borden*, 373 U.S. 690, 83 S. Ct. 1423 (1963), that a state court would have no jurisdiction in the case, because the concerned activity was arguably subject to the L.M.R.A.[2] Two Justices dissented, without opinion.

REASONS FOR GRANTING THE WRIT

(A) The Importance of the Question

The present case provides the text for the determination of a matter of vital concern to all individual em-

[1] See certified printed record, pages 147a, 157a.

[2] The employer submitted an affidavit in the lower court to establish that it met the jurisdictional yardsticks of the N.L.R.B. See certified record.

ployees as represented parties in the collective bargaining agreement as against the union and the employer, with relation to the enforcement of their rights under any existing agreement and the protection of their interests in the negotiation of such agreements. More particularly, the case is concerned with the remedy available to individual employees when the collective bargaining agent fails to discharge its duty to fairly represent them as members of the bargaining unit, by refusing to process grievances or to take other necessary steps for the adjudication of contract breach claims relating to seniority rights against the employer and by negotiating a subsequent agreement which essentially incorporated as a contract provision the complained-of treatment and extinguished accumulated seniority and related rights.

It should be emphasized that while the complaint sets forth considerable detail concerning the occurrences from the date of the work transfers claimed to be in violation of the existing agreement, that the gravamen of the action was the failure of the union to fairly represent the plaintiff class with relation to their seniority rights under the existing agreement and in the negotiation of the subsequent agreement in circumstances that had no relationship to protected or prohibited activity subject to the provisions of Section 7 or Section 8 of the Labor Management Relations Act of 1947. The case is therefore concerned with whether or not an alleged breach of the duty of fair representation, in and of itself, and apart from activity which is either specifically protected or prohibited under the Act, is subject to the exclusive remedial reach of the L.M.R.A., and within the exclusive jurisdiction of the National Labor Relations Board.

This Court has established that the concomitant of the broad scope of a union's authority as the exclusive bargaining agent for the employees in a bargaining unit under such decisions as *J. I. Case Company v. National Labor Relations Board*, 321 U.S. 332, 64 S. Ct. 576 (1944), is the right of the individual member of the bargaining unit to be fairly represented within the range of the union's authority to act on his behalf. *Steele v. Louisville and N. R. Company*, 323 U.S. 192, 65 S. Ct. 266 (1944); *Ford Motor Company v. Huffman*, 345 U.S. 330, 73 S. Ct. 681 (1953); and *Syres v. Oil Workers International Union, Local No. 23*, 350 U.S. 892, 76 S. Ct. 152 (1956).

While the duty of the collective bargaining agent to fairly represent has been clearly established, the cases in which relief has been granted for the alleged breach of the duty have been relatively few; and apart from cases decided under the Railway Labor Act, there has been no definitive determination as to whether the remedy for the breach is through appropriate equity court proceedings or a matter for the exclusive determination of the National Labor Relations Board under the provisions of the L.M.R.A. The most authoritative decisions support the position that the remedy is through the courts.

The *Syres* case, supra, strongly indicates—if it does not decide—that the breach of the duty of fair representation is the subject of appropriate court proceedings. In that case the district court dismissed for lack of jurisdiction a declaratory judgment proceeding instituted to declare void a labor contract alleged to have been negotiated by the bargaining agent without fairly representing the plaintiff class in the unit. The decision was affirmed on appeal, on the ground that there was no basis for jurisdic-

tion by a Federal court, the case not requiring the construction of the National Labor Relations Act or other Federal law, and involving only an issue of whether or not the defendants had violated a private contract. The dissenting opinion filed declared that the N.L.R.A., entered into the making of the contract because of the exclusive bargaining agency established pursuant to the Act, and concluded that the alleged discrimination was not within the specific unfair labor practices defined in the Act and could not be adequately remedied by the Board.

On petition for writ of certiorari to the Supreme Court, the writ was granted per curiam; the judgment of the court of appeals was reversed; and the case remanded to the district court for further proceedings, citing *Steele v. Louisville and N. R. Company*, supra; *Tunstall v. Brotherhood of Locomotive Firemen and Enginemen*, 323 U.S. 210, 65 S. Ct. 235 (1944); *Brotherhood of Railroad Trainmen v. Howard*, 343 U.S. 768, 72 S. Ct. 1022 (1952).

Further, in a number of instances, the Federal courts have taken jurisdiction of actions based only on the breach of the duty to fairly represent. *Whitfield v. United Steelworkers of America, Local No. 2708 and others*, 263 F. 2d 546 (1959), cert. denied, 360 U.S. 902, 79 S. Ct. 1285 (1959); *Hardcastle v. Western Greyhound Lines*, 303 F. 2d 182 (1962). See also *Britt v. Trailmobile Company*, 179 F. 2d 569 (1950), cert. denied, 340 U.S. 820 (1950). A state court took jurisdiction in such a case in *Cortez v. Ford Motor Company*, 349 Mich. 108, 84 N.W. 2d 523 (1957).

The case of *Holman v. Industrial Stamping and Manufacturing Company*, 344 Mich. 235, 74 N.W. 2d 322 (1955), is sometimes viewed as a breach of fair representation

case in which the state court held that it did not have jurisdiction, but the issue in the case was actually concerned with whether or not previous seniority rights under contracts could be affected by subsequent negotiations following the certification of a new bargaining representative; and the refusal of jurisdiction was related to that issue. Subsequent to the decision of the Michigan Supreme Court, a similar action was instituted in the United States District Court in *Hyleman v. Industrial Stamping and Manufacturing Company*, 142 F. Supp. 215 (1956); and the District Court, in a somewhat confusing opinion, in which the discussion is not always identified with the issue presented, generally declared that all complaints of discrimination are within the exclusive jurisdiction of the N.L.R.B.

Under the L.M.R.A., the N.L.R.B. clearly has jurisdiction to remedy discrimination which is violative of Section 8(a)(3) or 8(b)(2) (discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.[1] However, the N.L.R.B., until the recent case of *Miraclu Fuel Company*, decided December 19, 1962, 140 N.L.R.B. No. 7, by the full Board, with two members dissenting, has never indicated that the breach of the duty of fair representation, in and of itself, and without relation to protected or prohibited conduct under Section 7 and Section 8 of the Act, was subject to its jurisdiction as an unfair labor practice. It should be stated that the

[1] It has been indicated that the decision of the union's certification by the Board may, in some circumstances, be an appropriate remedy in such cases. *Wallace Corporation v. National Labor Relations Board*, 323 U.S. 248, 65 S. Ct. 328 (1944); *Hughes Tool Company v. N.L.R.B.*, 147 F. 2d 69 (C.C.A. 5th, 1945).

Board has interpreted the statute to give it authority to revoke certification where the duty of fair representation is breached by racial discriminations. *Larus and Brother Company*, 62 N.L.R.B. 1075 (1945). It must be observed, however, that any authority to decertify for failure to fairly represent has been most rarely exercised; and there is no other authority vested in the Board under the Act in the absence of the specified unfair labor practices.

In the *Miranda Fuel Company* case, the Board by a three-two decision held that discriminatory conduct which it found to be violative of Section 8(b)(2) and Section 8(a)(3) (discrimination to foster or discourage union activity), was also violative of Section 8(b)(1)A and Section 8(a)(1) (interference with concerted activity rights), on the rationalization that under Section 9 of the Act, the statutory bargaining representative is charged with the duty to represent the interests of all of the employees in the bargaining unit fairly and impartially; that Section 9 must be read into the rights guaranteed employees by Section 7 so that any default in Section 9 is correspondingly an infringement upon a Section 7 right; and that the infringement is, therefore, violative of Section 8(b)(1)A and Section 8(a)(1).

The dissenting members of the Board viewed the position advocated by the majority as "an unwarranted extension of Board authority." Recognizing that Section 9 of the Act does impose the indicated obligation upon a statutory representative and that the Board has authority in the exercise of the powers granted to it in that Section to insure compliance with that obligation by withholding or revoking certifications, the dissenting members conclude that the Section 9 duty of fair representation cannot prop-

erly be read into Section 7, and that even if it could, it does not follow: "That the prohibitory provisions of Section 8(a)(1) or 8(b)(1)A, or even all the provisions of Section 8, provide a remedy for all incursions upon those rights, or make the Board the exclusive guardian of those rights." The dissent concluded:

> "In situations where employees have been the victims of truly arbitrary or invidious discrimination at the hands of their statutory bargaining representative, with or without the employer acquiescence, they are not without recourse. This is true even where that arbitrary or invidious action is unrelated to legitimate union or other concerted activities protected by the Act. The courts have furnished, and do furnish, a remedy.[1] Congress has throughout the years indicated no dissatisfaction with this remedial scheme."

In assessing the indeterminate status of the matter, it is to be noted that in the recent case of *Local 100 of the United Association of Journeymen and Apprentices v. Borden*, supra, this Court expressly refrained from passing upon the correctness of the position taken by the majority or its applicability in the circumstances of the *Miranda* case.

The absence of a definitive decision by this Court as to the forum and remedy for this undoubted right, with the uncertainty now magnified by the recently announced new position of the divided Board, in a very real sense denies *any* relief or recourse for individual employees in the position of the plaintiffs in this case. Further, it re-

---

[1] The Dissent cites to this effect: *Steele v. Louisville and N. R. Company*, supra; *Tunstall v. Brotherhood of Locomotive Firemen and Enginemen*, supra; and *Syres v. Oil Workers International Union, Local No. 23*, supra.

tard's the proper and necessary development of the law to secure individual employee rights as against the "strength that has been accorded to numbers" under the Federal labor legislation.

It is fair to say that the paucity of cases in this area cannot be taken as evidence of the uniform proper discharge of the duty by the representative, but rather as a manifestation of the lack of the full development of the processes to remedy any failure, with the result that there is no legal assurance that the granted authority will be measured by the responsibility from which it springs.

(B) The Pennsylvania Decision Is Not in Accord With the Labor Management Relations Act

---

Because the opinion of the Pennsylvania Supreme Court fails to set forth what basis the majority believed the complained activity was subject to Section 7 or Section 8 of the L.M.R.A., it is impossible to determine what protected or prohibited activity was arguably involved in the case according to its view. Further, although the plaintiffs throughout based their claim upon the breach of the duty by the union to fairly represent them in circumstances "unrelated to legitimate union or other concerted activities protected by the Act," and the employer's wrongful participation in that breach, the opinion fails to specifically treat that basis of the claim for jurisdiction.

Instead, the Pennsylvania Court evidently applied the interpretation of the *San Diego Building Trades Council*

v. Garmon, supra, which it has developed in a series of cases that "arguably subject" activity within the primary jurisdiction of the N.L.R.B., is in effect any activity involving employment status which is not within the exceptions as defined in such cases as *United Construction Workers v. Laburnum Construction Corporation*, 347 U.S. 656, 74 S. Ct. 833 (1954); *International Association of Machinists v. Gonzales*, 357 U.S. 617, 78 S. Ct. 923 (1958); and *Smith v. Evening News Association*, 371 U.S. 195, 83 S. Ct. 267 (1962). The rule was thus stated in *Baker v. Shoppmen's Local Union No. 455*, 403 Pa. 31 (1961), a case in which the claimed discrimination was in the context of activities specifically protected or prohibited by the Act, as follows:

> "In the instant case, the plaintiffs charge the defendants with conspiracy and activities to injure their employment status through deprivation of seniority rights. Call it discrimination, a breach of duty, unfair dealing, or by any other name, that is the basic element of the cause stated. Relief and damages are sought for an alleged unlawful interference by the union and the employer with rights the plaintiffs are entitled to as employees. This is an unfair labor practice." (page 36)

See also *Smith v. Pittsburgh Gauge and Supply Company*, 412 Pa. 171, 178, 194 A. 2d 181 (1963), in which, again, under the facts the discriminatory action was very evidently subject to the Act.

The broad scope of activity assigned to the primary jurisdiction of the N.L.R.B. under the Pennsylvania Court interpretation is not founded on the provisions of the law,

as written, or the decisions of this Court. It represents an unwarranted extension of the definition of the activities and conduct subject to the Act and the jurisdiction of the National Labor Relations Board, with the result that almost nothing, rather than "much," is left to the states in the broad area of labor activity.

With specific relation to the present case, the rule fails to distinguish between the discrimination within the reach of the L.M.R.A., i.e., that which has as its object encouraging or discouraging union activity[1] and other discrimination, a distinction that underlies all of the decisions relating to that section. *Radio Officers Union v. National Labor Relations Board*, 347 U.S. 17, 74 S. Ct. 323 (1954); *Intermountain Equipment Company v. National Labor Relations Board*, 239 F. 2d 480, 483 (C.C.A. 9th, 1956); *National Labor Relations Board v. Intracoastal Terminal, Inc.*, 286 F. 2d 954, 958 (C.C.A. 5th, 1961).

The Pennsylvania Supreme Court also failed to give proper consideration to the contract aspect of this case. The conduct initiating the plaintiffs' complaint were the work transfers alleged to constitute breaches of the existing contract which was not to expire for more than a year. Further, the specific failure of the union in this regard was its refusal to process a grievance to have the matter adjudicated, a necessary prerequisite to any action to enforce the contract provisions, which, under the terms of the contract under pertinent rulings, only the union had the standing to enforce. *Falsetti v. Local Union No. 2020, U.M.W.A.*, 400 Pa. 145, 168 (1960).[1] As a result of the

---

[1] See also *Parker v. Borock*, 5 N.Y. 2d 156, 156 N.E. 2d 287 (1957); *Cortez v. Ford Motor Company*, supra; *Jacquess v. Pennsylvania Railroad Company*, 25 N.J. 541, 138 A. 2d 24 (1958).

very breach of duty claimed, it was legally impossible for the individual employees, in any manner, to realize their rights under the contract.

Inasmuch as the remedy for breach of contract is not within the exclusive jurisdiction of the National Labor Relations Board, *Smith v. Evening News Association*, supra; *Association of Westinghouse Salaried Employees v. Westinghouse Electric Corporation*, 348 U.S. 437, 444, 75 S. Ct. 489, 492 (1955), this action against the union, based upon its failure to secure the remedy for the plaintiffs' must likewise not be within its exclusive jurisdiction.[3]

It is evident that the duty of fair representation, in and of itself, is not arguably subject to the exclusive jurisdiction of the National Labor Relations Board as an unfair labor practice. This duty is not set forth in the specific sections describing protected and prohibited activity and cannot be reasonably read into these provisions.

The rights claimed in this case, involving principles of contract law, fiduciary responsibility and exhaustion of intraorganizational remedy cannot be equated with the specialized rights governed by the L.M.R.A., with relation to which the expertise of the N.L.R.B., is applied. Further, the limited remedies of decertification and something less than compensatory payment cannot provide the re-

[3] Apart from the plaintiffs' being unable to enforce their rights under the existing 1957 agreement, the status of their rights on its termination was doubtful, to say the least, when as a result of the work transfers and the enlargement of the numbers of the iron works employees, the subsequent 1959 agreement incorporated as a contract provision the very treatment of which complaint had been made.

coveries and relief required to fully secure the right claimed.

CONCLUSION

For the foregoing reasons, it is respectfully requested that this Petition for Writ of Certiorari be granted.

Respectfully submitted,

GEORGE J. BARCO,

YOLANDA G. BARCO,

BARCO AND BARCO,

Attorneys for Petitioners.

357 Center Street,
Meadville, Pennsylvania.

APPENDIX A

STATUTES AND CONSTITUTIONAL PROVISION INVOLVED

Article VI, Clause 2, of the Constitution of the United States, provides as follows:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State, shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Section 7 of the Labor Management Relations Act of 1947, 61 Stat. 136 et seq., 29 U.S.C.A. 157 provides as follows:

> "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title."

Statutes and Constitutional Provision Involved

Section 8(a) of the Labor Management Relations Act of 1947, 29 U.S.C.A. 158(a) provides as follows:

"(a) It shall be an unfair labor practice for an employer—

"(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title:

"(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: . . . (includes a proviso not here pertinent)

"(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: . . . (includes a proviso not here pertinent)

"(4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this sub-chapter;

"(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159(a) of this title."

Section 8(b) of the Labor Management Relations Act of 1947, 29 U.S.C.A. 158(b) provides as follows:

"(b) It shall be an unfair labor practice for a labor organization or its agents—

"(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title: Provided, That this paragraph shall not im-

pair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

"(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) of this section or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

"(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 159(a) of this title;

"(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: . . . (various objects are then listed)

"(5) to require of employees covered by an agreement authorized under subsection (a)(3) of this section the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the Board finds excessive or discriminatory under all the circumstances . . .

"(b) to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed."

Section 9(a) of the Labor Management Relations Act of 1947, 29 U.S.C.A. 159(a) provides as follows:

"(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect: Provided further, That the bargaining representative has been given opportunity to be present at such adjustment."

Section 10(a) of the Labor Management Relations Act of 1947, 29 U.S.C.A. 160(a) provides as follows:

"(a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 158 of this title) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that

has been or may be established by agreement, law or otherwise: . . ." (Includes a proviso not here pertinent)

Section 10(e) of the Labor Management Relations Act of 1947, 29 U.S.C.A. 160(e), provides as follows:

"(e) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this subchapter: Provided, That where an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him: And provided further, That in determining whether a complaint shall issue alleging a violation of subsection (a) (1) or (a) (2) of section 158 of this title, and in deciding such cases, the same regulations and rules of decision shall apply irrespective of whether or not the labor organization affected is affiliated with a labor organization national or international in scope. . . ."

APPENDIX B

OPINION OF THE SUPREME COURT OF PENNSYLVANIA

(Reported 412 Pa. 211)

Opinion by Mr. Justice Benjamin R. Jones, October 17, 1963:

Three employees (Employees) of the Struther Wells Corporation (Employer), members in good standing of the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers (A.F.L.-C.I.O.) (International) and Local 636 thereof (Local), on their own behalf and as representatives of the employee-class known as "Forge Employees," instituted an equity action in the Court of Common Pleas of Crawford County against the Employer, the International, the Local and certain International and Local officials.

The complaint averred, inter alia, that: under a collective bargaining agreement between the Employer, the International and the Local, *effective from June 15, 1957 to May 31, 1959*, the Employees were divided into two separate seniority rosters, namely, Forge Weldment Division and Iron Works Division; at a meeting held on May 2, 1959, a majority of the membership of the Local in attendance ratified a *new* seniority provision, known as Article II, of a proposed *new* supplemental collective bargaining agreement which agreement, effective June 1, 1959,

executed on September 23, 1959 was adopted by the Employer, the International and the Local: Article II of this *new* agreement eliminated the system of separate seniority rosters theretofore existing between Forge Employees and Iron Works Employees and provided that employees of the Forge Weldment Division seniority list would, as of May 1, 1959, be placed at the bottom of a consolidated seniority list, while still retaining overall length of service for vacation purposes: the Employer, engaged in the construction and manufacture of boilers and high-pressure vessels in various plants, operated a Forge Division at its Forge shop in Titusville, Crawford County, and an Iron Works Division at its Iron Works shop, located close by in Titusville: the Employees were employed in Employer's Forge Division at the Forge shop in Titusville: in August, 1957, the Employer began to move its machinery and work, which had been performed prior thereto in the Forge shop of the Forge Division, to the Perry Forge shop and the Iron Works shop: in these latter shops, Forge employees were furloughed and additional Iron Works employees were engaged: by April 1959, all operations at the Forge shop had ceased and the machines and orders on which the Forge employees had customarily worked were being serviced at the Iron Works shop and the Perry Forge shop by Iron Works employees, many of whom had less seniority than the Forge Employees under the collective bargaining agreement of 1957: the furloughed Forge employees, who were thus out of work from April, 1959 to the date of filing the complaint in August, 1960, would have been employed during that entire period and many of the other Forge employees would have been employed for a larger period of time but for the action taken by the Employer, the Unions and the named Union officials.

The complaint further alleged that: the Employer's actions in transferring the work and machinery from the Forge Division shop, culminating in a termination of the work of the operators there on or about April, 1959, with the consequent laying off of the Forge employees who would otherwise have been employed there, constituted a permanent discontinuance of the department, entitling the furloughed employees to severance pay; the Employer's actions, in establishing a consolidated seniority list was arbitrary and discriminatory against the Forge employees and wrongfully deprived them of their rights under the 1957 agreement and, by increasing the representation of the Iron Works employees and weakening the representative strength of the Forge employees, the latter were deprived of their rights as members of a bargaining unit; the International and the Local acted improperly and wrongfully in adopting the consolidated seniority list which was arbitrary and discriminatory as to the Employees and caused them to lose their seniority status; the Unions breached their duty to fairly represent all members of the bargaining unit, including Employees; the Local's actions, approved by International, were directed by certain named executive officers of the Local who, by reason of hostility, failed to press the Employees' grievances and treated the Forge employees' seniority and other rights in bad faith, fraud and discrimination so as to deprive them of their rights; these officers of the Local acted in concert with the Employer to the Employees' detriment, the Local's action being approved by the International.

The relief requested was several-fold: (1) reinstatement to positions, classifications, seniorities and related rights, including rights under the 1957 and 1959 collective

bargaining agreements: (2) payment of back wages and vacation pay and/or severance pay: (3) payment of costs and counsel fees: (4) injunctive relief restraining all the defendants from (a) retaliation against the Employees and (b) doing any acts in derogation of the Employees' rights.

Preliminary objections to the complaint were filed which averred, inter alia, that: (1) the matters complained of were *exclusively* within the jurisdiction of the National Labor Relations Board: (2) that the complaint (a) failed to set forth a cause of action and (b) combined causes of action ex contractu and ex delicto.

The court below sustained the preliminary objections and concluded, inter alia, that the matters complained of were *exclusively* within the jurisdiction of the National Labor Relations Board and not within the jurisdiction of the state court and that the complaint did not set forth a justiciable cause of action. From the order dismissing the complaint this appeal was taken.

In Smith v. Pittsburgh Gage and Supply Company, 412 Pa. 171, A. 2d , we reviewed recent rulings of the United States Supreme Court on the scope of the jurisdiction of state courts in cases where the activity complained of is arguably subject to the protections of Section 7 or the prohibitions of Section 8 of the National Labor Relations Act.[1] In Smith, we said (p. 174): "The basic rule delineating jurisdiction in this area of the law was recently reiterated by the United States Supreme Court in Local 100 v. Borden, 373 U.S. 690, 693, 83 S. Ct. 1423,

[1] Act of July 5, 1935, c. 372, 49 Stat. 449, as amended, 29 U.S.C. §§157, 158.

1425." 'This Court held in San Diego Building Trades Council v. Garmon, 359 U.S. 236, 79 S. Ct. 773, that, in the absence of an overriding state interest such as that involved in the maintenance of domestic peace, state courts must defer to the exclusive competence of the National Labor Relations Board in cases in which the activity that is the subject matter of the litigation is arguably subject to the protections of §7 or the prohibitions of §8 of the National Labor Relations Act.' The rationale of that rule is clear: in its promulgation of rules governing the relations of labor and management as such affect interstate commerce, 'Congress did not merely lay down a substantive rule of law to be enforced by *any* tribunal competent to apply law generally to the parties. It went on to confide *primary* interpretation and application of its rules to *a specific and specially constituted* tribunal [the National Labor Relations Board] . . . Congress evidently considered that centralized administration of specially designed procedures was necessary to obtain uniform application of its substantive rules and to avoid those diversities and conflicts likely to result from a variety of procedures and attitudes toward labor controversies. . . . A multiplicity of tribunals and a diversity of procedures are quite as apt to produce incompatible or conflicting adjudications as are different rules of substantive law.' (Emphasis supplied.) Garner v. Teamsters, Chauffeurs and Helpers, 346 U.S. 485, 490, 491, 74 S. Ct. 161, 165, 166. In San Diego Building Trades Council v. Garmon, supra, Mr. Justice Frankfurter (79 S. Ct. 778) stated: 'In determining the extent to which state regulations must yield to subordinating federal authority, [the Court has] been concerned with delimiting areas of potential conflict: potential conflict of law, of remedy, and of administration' and that

'[w]hen the exercise of state power over a particular area of activity threatened interference with the clearly indicated policy of industrial relations, it has been judicially necessary to preclude the states from acting. [citing cases.]'

"The U. S. Supreme Court has established a yardstick for determining when 'due regard for the federal enactment requires that state jurisdictions must yield', i.e., 'when an activity is *arguably* subject to §7 or §8 of the Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board.': (Emphasis supplied.) Garmon, supra, 79 S. Ct. 780. See also: Marine Eng. Ben. Association v. Interlake Steamship Co., 370 U.S. 173, 82 S. Ct. 1237.

"To the general rule defining jurisdiction, the U. S. Supreme Court has recognized exceptions in the case of certain activities, even though such activities are arguably, or even concededly, within the protections of §7 or the prohibitions of §8 of the Act. As examples, the Garmon rule has been held inapplicable or irrelevant (a) where the activity consists of 'conduct marked by violence and imminent threats to the public order' (United Construction Workers v. Laburnum Construction Corp., 347 U.S. 656, 74 S. Ct. 833; United Automobile Workers v. Russell, 356 U.S. 634, 78 S. Ct. 932); (b) where actions are brought on collective bargaining contracts under §§301, 303 of the Labor Management Relations Act of 1947 even though arguably, or even concededly, unfair labor practices are involved therein, (Dowd Box Co. v. Courtney, 368 U.S. 502, 82 S. Ct. 519; Local 174 v. Lucas Flour Co., 369 U.S. 95, 82 S. Ct. 571; Atkinson v. Sinclair Refining Co., 370 U.S. 238, 82 S. Ct. 1318; Smith v. Evening News Association, 371 U.S.

195, 83 S. Ct. 267): (c) where 'the lawsuit [is] focused on purely internal union matters, i.e., on relations between the individual plaintiff and the union not having to do directly with matters of employment and . . . the principal relief sought [is] restoration of union membership rights.' (International Association of Machinists v. Gonzales, 356 U.S. 617, 78 S. Ct. 923)."

In the case at bar, the activities of which the Employees complain are, at least arguably, subject to Sections 7 or 8 of the National Labor Relations Act and within the protection of Section 10 of the Act and, therefore, unless such activities fall within one of the exceptions to the general basic rule, the state court is without jurisdiction in this action. Our inquiry is to determine whether the instant complaint spells out an activity falling within any of the exceptions to the general rule.

Clearly, the activities herein complained of do not consist of "conduct marked by violence and imminent threats to the public order" under Laburnum or Russell, supra, nor is "the lawsuit focused on purely internal union matters . . . not having to do directly with matters of employment" wherein the principal relief sought is the restoration of union membership rights under Gonzales, supra.

Lastly, does the complaint bring the case at bar within the class of actions based on collective bargaining agreements under Section 301 of the Labor Management Relations Act of 1947[2] whereof the United States Supreme Court has recently spoken in Smith v. Evening News Association, 371 U.S. 195, 83 S. Ct. 267, 9 L. Ed. 2d 246.

[2] Act of June 23, 1947, c. 120 et seq., 61 Stat. 136, 29 U.S.C. §185.

In Evening News Association, supra, the Supreme Court held that, even though the activity which allegedly constituted the breach of a collective bargaining agreement was *concededly* an unfair labor practice under the the National Labor Relations Act, supra, a common law action by an individual employee member of a labor organization against the employer for damages for breach of a collective bargaining agreement between such labor organization and the employer in an industry affecting interstate commerce could be entertained in a state court. As a result of Evening News Association it is now clear that the common law jurisdiction of state courts to entertain suits upon collective bargaining contracts (brought or held to arise under Section 301 of the Labor Management Relations Act, supra), is not excluded either by the jurisdiction of the National Labor Relations Board or of the Federal Courts.

However, the *only* actions which fall within that class of actions to which state courts' jurisdiction extends under the rationale of Evening News Association are "[s]uits for *violation of contracts* between an employer and a labor organization representing employees in an industry affecting commerce . . . , or between any such labor organizations . . .": (Emphasis supplied) Section 301 of the Labor Management Relations Act, supra, 29 U.S.C. 185. If the action is not based upon a *violation* of the terms and provisions of a collective bargaining contract or agreement between a labor organization and an employer, then the state court has no jurisdiction. In Schatte v. International Stage Employees and Moving Picture Machine Operators, 84 F. Supp. 669, aff'd 182 F. 2d 158, reh. den. 183 F. 2d 685; cert. den. 340 U.S. 827, 71 S. Ct. 64, reh. den.

340 U.S. 885, 71 S. Ct. 194, the court stated (84 F. Supp. 672): "any right of recovery under Section 301 must rest upon a *contract* and its asserted violation. The whole Act relates to labor contracts, hence it must be a contract contemplated by the Act, i.e., a collective bargaining contract or contract relating to fair or unfair labor practices." The plain and unambiguous language of the statute compels no other conclusion.

The real crux of the Employees' complaint is stated in paragraph 20 of their complaint: "The execution of the 1959 Agreement, and the actions and agreements of the [Employer] and the [International and Local] with relation to the seniority rights of the [Employees], the Forge Employees, were invalid, improper, void and illegal, for the reasons and averments hereinafter set forth, and resulted in the loss of all of the seniority rights of the [Employees] which they had accumulated prior to May 1, 1959 . . ." Neither in paragraph 20 nor in any other portion of the complaint is there an averment of a *violation* of the 1959 collective bargaining agreement between the Unions and the Employer. The thrust of the complaint is an attack upon the conduct of both the Unions and the Employer in the negotiations and the incidents which led to and resulted in the formulation of the new seniority provisions in the 1959 agreement and a challenge to the bona fides of the Employer and Union vis-a-vis the Employees. In effect, the complaint seeks a rescission of the seniority provisions in the 1959 collective bargaining agreement[a] allegedly brought about by improper conduct

[a] "There is no natural or vested right to seniority. Seniority arises only as a result of a contract express, or clearly implied: [citing cases]." Fawcett v. Monongahela Railway Co., 391 Pa. 134, 136, 137 A. 2d 768.

on the part of the Unions and the Employer and the reinstatement of the pertinent seniority provisions of the 1957 collective bargaining agreement. However, no *violation* of the collective bargaining agreement between the Unions and the Employer is averred and, absent such an averment, the instant case is clearly not within the class of actions contemplated by Section 301, supra, and the rationale of Evening News Association, supra.

An examination and a study of this complaint clearly reveals that the basic general rule which excludes the jurisdiction of state courts applies, and that the Employees' *exclusive* forum is the National Labor Relations Board and not the state courts. The Garmon rule commands the exclusion of this action from the jurisdiction of the state courts and the court below properly dismissed the complaint for lack of jurisdiction.

That which the Supreme Court said in Borden, supra (373 U.S. 698) is presently applicable: "In the present case the *conduct* on which the suit is centered, whether described in terms of tort or contract, is conduct whose lawfulness could initially be judged only by the federal agency vested with exclusive primary jurisdiction to apply federal standards."

In view of the conclusions reached, consideration need not be given to other questions raised by the preliminary objections.

Order affirmed. Each party to pay own costs.

Mr. Chief Justice Bell and Mr. Justice Musmanno dissent.

APPENDIX C

COMPLAINT

The Plaintiffs bring this action in equity, for themselves, individually, and for and on behalf of the class hereinafter described of which they are members, on causes of action of which the following is a statement:

1.

The Plaintiff, F. J. Cosmark, is an individual who resides at 405 North Kerr Street, Titusville, Pennsylvania; the Plaintiff, John C. Martin, is an individual who resides at 743 Garden Street, Titusville, Pennsylvania; and the Plaintiff, Melvin D. Patterson, is an individual who resides at R. D. No. 1, Diamond, Pennsylvania.

At all times hereinafter mentioned, the Plaintiffs and the class which they represent were employees of the Defendant, Struthers Wells Corporation, and members in good standing of the Defendant, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers of America, and Local Lodge 636 thereof; the said class which they represent will hereinafter be referred to as "Forge Employees," being hereinafter further described.

2.

The Defendant, Struthers Wells Corporation, hereinafter referred to as "Employer," is and was at all times

hereinafter mentioned, a business corporation, maintaining its principal place of business in Titusville, Crawford County, Pennsylvania, and is engaged in the fabrication, construction and manufacture of boilers and high pressure vessels, maintaining various plants in the City of Titusville in which it carries on the said activities.

3.

The Defendant, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers of America (A.F.L. C.I.O.), hereinafter referred to as the "International," is an unincorporated association, being a voluntary association together of workers for collective bargaining purposes and is the parent labor organization composed of workers associated together and organized in local or subordinate unions or lodges, chartered as subordinates, by the International which consists of all of the subordinate local unions or lodges, the members of which are, by virtue of being such, the membership of the International which is governed by the membership through, and by means of, representative and democratic processes.

The International headquarters and the offices of the President of the said International are in the New Brotherhood Building, Eighth Street and State Avenue, Kansas City 11, Kansas.

The International is territorially divided into sixteen (16) sections, including the Allegheny section, which is composed of the states of Pennsylvania, New Jersey, Maryland and the District of Columbia, which is under the supervision of International Vice President J. V. Kearney, with offices located in Philadelphia, Pennsyl-

vania; and the International conducts its activities in Crawford County, Pennsylvania, through various local lodges, including Local Lodge 636.

4.

Local Lodge 636 of the Defendant International, hereinafter referred to as the "Local," is an unincorporated association, being a subordinate or local union or lodge chartered by the Defendant International as such and functioning as a labor organization for collective bargaining purposes. The offices of the Local are located in Titusville, Pennsylvania.

5.

The Defendant, Russell A. Graham, is an individual who resides at 304 North Franklin Street, Titusville, Pennsylvania, and is District Representative for the International in northwestern Pennsylvania, his functions including the servicing of the Local. In addition, during the major portion of the period pertinent to the Plaintiffs' causes of action, as hereinafter set forth, the said Defendant was the President of the Local.

6.

On and prior to June 19, 1957, the Defendant International and the Defendant Local constituted the statutory collective bargaining agent for the employees of the Defendant Employer in the unit composed of the employees of the Forge Division at the Forge Shop located at 617 East Central Avenue, Titusville, Pennsylvania, and the employees of the Iron Works Division at the Iron Works Shop located at 315 South Franklin Street, Titusville, Pennsylvania.

7.

The Plaintiff class is composed of those individuals who were the employees of the Forge Division on June 19, 1957, referred to herein as "Forge Employees," numbering approximately one hundred eight (108) men, and are so numerous as to make it impracticable to join all as parties Plaintiff.

For the purposes of the Plaintiffs' causes of action set forth herein, the Forge Employees stand in a similar position to the individual Plaintiffs, and the individual Plaintiffs can adequately represent them by reason of which this action is brought by the said Plaintiffs on behalf of the Forge Employees. Although this action is brought on behalf of all of the Forge Employees, there is added to this Complaint as a part hereof Exhibit 'A' which sets forth the names and the beginning dates of employment with the Forge Division of the members of the Forge Employees who have specifically requested that they be recorded as actively participating in this action with the named Plaintiffs.

8.

The Defendant, Lee A. Reisinger, is an individual who resides at Hydetown, Pennsylvania; the Defendant, Donald E. Chapel, is an individual who resides at Titusville, Pennsylvania; and the Defendant, Harry A. Wiles, is an individual who resides at 5 Second Street, Tidioute, Pennsylvania.

9.

At all times hereinafter mentioned, the individual Defendants, just named, and the class which they represent were employees of the Defendant Employer and members of the Defendant's International and Local; the said class

which they represent will hereinafter be referred to as "Iron Works Employees," being hereinafter further described.

9.

The Defendant class is composed of those individuals who were the employees of the Iron Works Division, on June 19 1957, who numbered approximately one hundred fifty (150) employees, and all the additional employees who were employed thereafter in said Division until May 1, 1959, when they numbered approximately two hundred fifty (250) and are so numerous as to make it impracticable to join all as parties Defendant. The Defendant, Lee A. Reisinger, is, at the present time, President of the Defendant Local; the Defendant, Donald E. Chapel, is, at the present time, Financial-Corresponding Secretary of the Defendant Local; and the Defendant, Harry A. Wiles, was at the time pertinent to the Plaintiffs' causes of action, Financial-Corresponding Secretary of the said Local; all of the said individual Defendants are employees of the Iron Works Division, and for the purposes of the Plaintiffs' causes of action set forth herein, the members of the Defendant class, referred to herein as "Iron Works Employees," stand in a similar position to the said individual Defendants for which reason and because of their respective offices the said individual Defendants can adequately represent the Iron Works Employees by reason of which this action is brought against them on behalf of the Iron Works Employees.

10.

By reason of the Defendant International and the Defendant Local being the statutory collective bargain-

ing agent for the employees of the Defendant Employer in the said unit, they function as the exclusive agent pursuant to the certification of the National Labor Relations Board dated May 16, 1947, under the pertinent federal labor statutes, and have been authorized by procedures pursuant to the said statutes to negotiate with the Defendant Employer, and, at all times pertinent hereto, have negotiated and now have in effect, an agreement containing a contractual provision requiring that all employees of the Defendant Employer in the said unit be members of the Defendants' International and Local.

11.

Commencing in 1945, the Defendant Employer and the Defendants International and Local established and put into practice a separate seniority list for each of the said divisions in the said unit, which established practice was reduced to writing and incorporated as a part of the various collective bargaining agreements executed between the said parties beginning on May 26, 1950, including the agreement executed on June 19, 1957, hereinafter referred to as "1957 Agreement," which continued into effect through May 31, 1959.

12.

The 1957 Agreement, inter alia, provided with relation to seniority under Article II, Section 1, thereof, the following provision which also appeared in the previous bargaining agreements as above mentioned:

"Seniority is defined as follows: (a) Length of continuous service with the Corporation for vacation

purposes. (b) Length of continuous service in any and all classifications within the bargaining unit, in all departments and shops of the plant, for purposes of lay-off, reinstatement and advancement within the jurisdiction of the Union. Each Division is to maintain a separate seniority roster. An Employee may be transferred by the Company from one division to another on a temporary basis for a period of not to exceed sixty (60) days without any change in his seniority status. Where an employee is so transferred for a period of over sixty (60) days, such transfer shall be deemed permanent unless an extension of said sixty (60) days shall be agreed to between the Company and the Union. However, in no case is an Employee to be transferred from one Division to another while an Employee is on lay-off from that Division or who holds or has previously held the same classification of the employee to be transferred."

13.

By virtue of the said seniority provision, on May 31, 1959, the termination date of the 1956 Agreement, the Forge Employees of the Defendant Employer had seniority rights of three (3) to fourteen (14) years, with an average seniority of approximately eight (8) years.

14.

The seniority rights of the employees in the said unit, under the provisions of the 1957 Agreement and the previous agreements, as above mentioned, determined the rights of an employee on lay-off, reinstatement, advancement, vacation and severance pay.

15.

The general provisions relating to seniority in the 1957 Agreement, including the provisions set forth in Article II, Section 1, set forth above, are set forth in Exhibit B, which is attached hereto and made a part hereof.

16.

The vacation rights and the severance pay rights, as determined by seniority under the 1957 Agreement, are set forth in Article VII and Article XVIII, respectively, of the said Agreement, a true and correct copy of each of which is attached hereto, marked Plaintiffs' Exhibits C and D, respectively, and made a part hereof.

17.

Although the 1957 Agreement expired on May 31, 1959, the Defendant Employer and the Defendants International and Local, on September 23, 1959, executed a new collective bargaining agreement which became effective as of June 1, 1959, and continued in effect through July 31, 1960, under which the separate seniority rosters established in 1945 were eliminated; and the names of all of the Forge Employees, the Plaintiffs herein, were placed at the bottom of the Iron Works Division seniority list as of May 1, 1959.

18.

The said agreement executed on September 23, 1959, hereinafter referred to as the "1959 Agreement," contained the following provisions in Article II, Sections 1 and 2, which terminated the seniority rights of the Forge Employees in the manner just described:

"Section 1. Service with the Company shall be defined as follows: (a) Length of continuous unbroken service with the Company for vacation purposes, which, for the purposes of this Agreement, shall hereafter be referred to as 'length of service.' (b) Length of continuous unbroken service with the Company within the bargaining unit, in all departments and shops of the plants, for purposes of lay-off, recall, shift preference and advancement within the jurisdiction of the Union, shall, for the purposes of this Agreement, be hereafter referred to as 'seniority.' (c) Continuous unbroken service, as used in this Section 1, shall be deemed to mean service not interrupted by discharge or other termination.

"Section 2. The separate seniority rosters provided for in prior Agreements are hereby eliminated. All employees of the Company whose names appear on the Forge Weldment Division seniority list as of May 1, 1959, shall be placed at the bottom of the present Iron Works Division seniority list, in their respective classifications, retaining, on such combined seniority list, their former positions with respect to each other. The combined seniority list shall henceforth be deemed to be one seniority list and shall be known as the 'seniority list.'

"Such former Forge Weldment employees shall retain all 'length of service' for vacation purposes, but their 'seniority' shall become effective as of May 1, 1959. In case of reduction of the Company's work force, former Forge Weldment employees who have been added to the new seniority list, as provided for

herein, shall be subject to layoff before former Iron Works Division employees whose names appear on the said new seniority list. Since all former Forge Weldment employees included in the new seniority list have the same 'seniority' date, they shall be subject to layoff in accordance with their position with respect to each other, commencing with the employee at the bottom and working upward.

"All new employees hired on or after May 1, 1959, shall be placed on the seniority list in their respective classifications, below the above referred to former Forge Weldment employees, and shall be subject to layoff prior to such former Forge Weldment employees.

"The Company may assign any employee on the seniority list to work as the Company finds him qualified in his job classification in any place at any time without affecting his seniority. However, in case the assignment is to work in a location away from what is generally known as the Iron Works and the employee declines to accept the assignment, he shall not be required to accept such assignment unless he is the most junior-in-seniority qualified employee then working. If he is the most junior-in-seniority qualified employee then working, he shall perform his work as assigned in such case."

19.

The said provisions relating to seniority in the 1959 agreement, including the provisions set forth in Article II, Sections 1 and 2, set forth above, are set forth in

Exhibit E, which is attached hereto and made a part hereof.

20.

The execution of the 1959 Agreement, and the actions and agreements of the Defendant Employer and Defendants International and Local with relation to the seniority rights of the Plaintiffs, the Forge Employees, were invalid, improper, void and illegal, for the reasons and averments hereinafter set forth, and resulted in the loss of all of the seniority rights of the Plaintiffs which they had accumulated prior to May 1, 1959, to their great and irreparable loss, for which they have no adequate remedy at law.

21.

Notwithstanding that the Defendant Employer, on and prior to June 1, 1957, i.e., the beginning date of the 1957 Agreement, desired and planned to have the seniority roster of each Division of the said bargaining unit existing under the 1957 and prior agreements combined into one (1) seniority roster for all of the employees of the said bargaining unit, irrespective of in which Division or plant they were employed; yet, it is so that no information or notice of this matter was conveyed to the duly authorized officers, representatives or members of the said bargaining unit until in early August, 1957, when, C. E. Hilliard, Personnel Director of the Defendant Employer, conveyed this information to the shop-bargaining committeemen, who were the representatives of the said unit, and requested that the members of the Defendant Local agree to a combined seniority list for the entire unit, notwithstanding that such a combined seniority list was

contrary to the terms of the 1957 Agreement relating thereto, as above set forth.

22.

Without affording the Defendant Local with a reasonable opportunity for its members to consider the said request and without waiting for any appropriate formal action on the part of the Defendant Local to modify the seniority provisions of the 1957 Agreement, the Defendant Employer, in August, 1957, began the moving of certain machinery and work which, for many years prior thereto, had been located and performed in the Forge Division to the Perry Forge Shop and the Iron Works Shop; and in connection therewith, began the hiring of new employees to perform the said work on the said machinery, which new employees were recognized by the Defendant Employer and designated by the Defendant Wiles as "Iron Works Employees," without any formal action on the part of the Defendant International or the Defendant Local, its duly authorized officers and members, all of which was contrary to the provisions of the 1957 Agreement.

23.

The said Perry Forge Shop was another plant of the Defendant Employer located in the City of Titusville, Pennsylvania, which had been recently acquired and which had been occasionally used for work customarily performed by the Forge Employees in the Forge Shop and for which there had never been any determination by the Defendant Employer and the Defendant Local as to which Division employees were to be employed therein, the said

Shop being referred to under Article XII, Section 3, of the 1957 Agreement as "the future addition now known as Perry Forge Dept."

24.

After the request of the Defendant Employer for a combined seniority list was made to the representatives of the bargaining unit, as aforesaid, the said request received a favorable majority vote of the said committeemen, representing the Iron Works Division and the Forge Division; and it was agreed that the matter would be formally presented for the approval of the membership of the Defendant Local at the next regular meeting.

25.

Despite the action of the said committeemen, the Defendant Wiles, who was Chairman and also then Financial-Corresponding Secretary of the Defendant Local, and who was in charge of it during the many absences from the city in the latter four (4) months of 1957 of the Defendant Graham, who was then President, engaged in a consistent course of conduct, as a principal officer of the said Local, which was unfair, malicious, prejudicial, and arbitrary, which conduct included his regularly, repeatedly, and without due and proper cause, inciting the Iron Works Employees against the Forge Employees, particularly the New Iron Works Employees, by declaring to them that their jobs would be taken from them by the Forge Employees on any consolidation, and falsely representing to them that the Forge Employees were not members of the Defendant Local, but were members of the C.I.O. union, the members of which were

also employed by the Defendant Employer in another bargaining unit in its Titusville plants.

26.

The aforementioned conduct of the Defendant Wiles was motivated by a desire to protect and promote his own personal interests, and those of the other Iron Works Employees of whom he was a members by arbitrarily opposing any consolidation of the seniority lists, his object being to prevent any of the Forge Employees from having any seniority rights over any members of the Iron Works Employees—all of which was contrary to his duties as a principal officer of the Defendant Local, to fairly, impartially, and properly represent all of the members of the Local, including the minority group, the Forge Employees.

27.

At the regular November, 1957, meeting of the Defendant Local, the approval of a plan of combining the seniority rosters of the two Divisions, which recognized the seniority rights of all of the employees in the unit, was adopted by a proper standing vote of the members of the Defendant Local; notwithstanding this fact, later at the same meeting, certain Iron Works Employees hired during and after August, 1957, prevailed upon the Defendant Graham—who was presiding—to improperly permit a second vote on the same question, whereupon the earlier adopted seniority plan was defeated by one (1) vote.

28.

The second vote on the said seniority question was invalid and improper because there was no proper basis

for it; and it was contrary to the *Roberts Rules of Order*, which governs all of the business meetings of the Defendant Local under the provisions of the International and Local Constitution and Bylaws.

Further, the said Defendant Wiles, in abuse of his position as Financial-Corresponding Secretary, permitted certain individuals to vote who were newly employed at the Iron Works Shop and the Perry Forge Shop, but who were *not* members of the Defendant Local because their applications for membership had not been fully processed in accordance with Article VI of the International Subordinate Lodge Constitution, entitled "Qualifications for Membership," and, in addition, certain newly employed Iron Works Employees physically compelled some of the Iron Works Employees, who had refrained from voting on the first vote, to vote against the plan.

Finally, the said second vote was invalid and improper because it was conducted in the absence of certain members who had voted on the first vote.

29.

In a further attempt to comply with the Defendant Employer's request for combining of the seniority rosters of the said Divisions, the Defendant Local, at its regular December, 1957, meeting, submitted to its members a proposal for the straight consolidation of the seniority lists of the Iron Works Division and of the Forge Division, which plan was defeated as a result of a continuation of the improper conduct of the Defendant Wiles described in paragraph 25 and in the preceeding paragraph, all of which was to the great detriment of the Forge Employees.

who were now outnumbered by the "new members" of the Iron Works Division who had been hired since August, 1957.

30.

After the abovementioned December, 1957, meeting, that is, on December 9, 1957, the Forge Employees, orally and in writing, presented a request to the Defendant Graham—as President of the Defendant Local, and as District Representative of the Defendant International—for the removal of the Defendant Wiles from his office of Financial-Corresponding Secretary of the Defendant Local on the grounds of his consistent unfair, malicious, prejudicial and arbitrary activities against the Plaintiff Forge Employees, who were a minority group of the said Defendant Local.

31.

Notwithstanding this request of the Forge Employees, which was properly made, under Section 16 of the Local Bylaws and under Sections 1, 11 and 13 of Article XIII of the International Subordinate Lodge Constitution, to the Defendant Graham in his official capacities, the Defendant Graham refused to permit them to process the said complaint, contrary to their rights under the said provisions. A copy of the said provisions are set forth in Exhibit F, which is attached hereto and made a part hereof.

32.

From on or about August 15, 1957, until May, 1958, the Defendant Employer, by its Vice President, James F. Sweeney, and Personnel Director Hilliard, repeatedly

assured the Forge Employees that during the term of the 1957 Agreement there would be continuous employment for them at the Forge Division plant, and, further, represented to the Forge Employees, who had the greater seniorities, that there would continue to be employment for them at the Forge Division plant for an indefinite future period, irrespective of any action by the Defendant Local relating to the consolidation of the seniority lists, and by reason of their reasonable reliance on the said representations, the said Forge Employees did not fully participate in the business meetings of the Defendant Local relating thereto, including the abovementioned November and December meetings.

33.

During the same period that the said representations were being made by the Defendant Employer to the Forge Employees, it was steadily engaged in removing machinery, operations and work orders from the Forge Shop to the Iron Works and Perry Forge Shops, to perform which work it was employing new employees, while furloughing Forge Employees with greater seniorities, although the said Forge Employees were ready, willing and able to perform the said work which they had customarily performed, irrespective of the location at which the Defendant Employer desired it to be performed, all of which actions of the Defendant Employer were in direct violation of the seniority provisions of the 1957 Agreement.

34.

Commencing in August, 1957, and continuing at periodic intervals thereafter every several weeks through

April, 1958, the Defendant Employer, through Personnel Director Hilliard, repeatedly requested and urged the Defendant Local to agree upon a combined seniority list, notwithstanding the provisions contained in the 1957 Agreement relating to the separate seniority lists.

35.

From on or about August 15, 1957, and periodically thereafter, every several weeks until early May, 1958, the Defendant Employer, through its Personnel Director Hilliard, improperly requested the Forge Employees, through their shop committeemen, to work out of classification, contrary to the provisions of the existing 1957 Agreement, and to conform to the improper practice of the Iron Works Employees who were complying with such requests.

36.

The Defendant Graham and the Defendant Wiles, in furtherance of their plans to discriminate against the Forge Employees unknown to the Forge Employees—ordered, instructed, and permitted various Iron Works Employees to work out of classification, contrary to the provisions of the 1957 Agreement, in accordance with the request and urging of the Defendant Employer; while, at the same time, the Defendant Graham instructed the Forge Employees to work only in classification, with which they complied, as a result of which the Defendant Employer in April, 1958, transferred considerably more of the equipment and a large quantity of the unfinished work then in process in the Forge Division to the Iron Works Division, although the Forge Employees were ready, willing and able to use the said equipment and to

perform the said work at any location desired by the Defendant Employer, which action of the Defendant Employer was in further and continuing violation of the seniority provisions of the 1957 Agreement.

37.

Upon the Plaintiff Forge Employees learning of the improper practice of the Defendant Employer and the Defendant Iron Works Employees set forth in the foregoing paragraph—and that this practice was with the full knowledge, approval and consent of the Defendants Graham and Wiles—on May 12, 1958, the Plaintiff Forge Employees, through the Plaintiff, John C. Martin, Chairman of the Grievance Committee of the Forge Employees*, for and on their behalf and in accordance with their request, filed a written grievance with Personnel Director Hiliiagi of the Defendant Employer, in accord with the pertinent provisions of Step 2 of Article V of the 1957 Agreement, which grievance Personnel Director refused to accept and process by reason of the fact that he had received instructions from the Defendant Wiles, as Chairman of the Grievance Committee of the bargaining unit, not to accept and process any such grievance.

38.

Thereafter, the Forge Employees duly requested the Defendant Graham in his official capacities to require the processing of their grievance by the Defendant Employer and the Defendant Wiles in accordance with the aforementioned provisions of the 1957 Agreement relating to the processing of grievances, but the Defendant Graham

* Forge Works Division Committee

would not accede to their request and would not permit their grievance to be further processed.

39.

By reason of the said actions of the Defendant Employer through its Personnel Director Hilliard and the said arbitrary, unreasonable, discriminatory and improper actions of the Defendants Graham and Wiles, it was impossible for the Plaintiff Forge Employees to further process their grievance in accordance with the pertinent provisions of the 1957 Agreement; and, in any event, further action on their part was useless and futile in view of the attitude and actions of the Defendants Graham and Wiles, as above set forth, and in view of the fact that the Grievance Committee of the bargaining unit, through which any further action was required to be processed, then consisted of three (3) employees, with the Defendant Wiles as Chairman, another Iron Works Employee as another member, the third member being a Forge Employee; and the Defendant Graham, as District Representative of the International, could also participate if requested by the Grievance Committee. The provisions of the 1957 Agreement relating to grievance procedure, set forth in Article V thereof, are set forth in Exhibit G, which is attached hereto and made a part hereof.

40.

By reason of all of the facts set forth in the foregoing averments, in May, 1958, the Forge Employees requested the Defendant Graham—as President of the Defendant Local and as District Representative of the Defendant International—to permit them to file a written grievance

through the Local to the International President for a ruling relating to their seniority rights in view of the continued demand of the Defendant Employer for consolidation and the Defendant Employer's activities above referred to, and for a proper determination thereof in accordance with the policies, principles, Constitution and Bylaws of the Defendants International and Local.

41.

Notwithstanding that the said request of the Plaintiffs was made for proper cause and that irreparable damage was threatened to each of the Plaintiffs because of the matters aforesaid, the Defendant Graham refused to grant permission to them to file their grievance, informing the Plaintiffs that such a complaint would have to be processed through the Defendants Graham and Wiles in their respective official capacities, and that he (Graham) would not permit any such complaint to be filed because it would unfavorably reflect upon him as President of the Local and as District Representative of the International.

42.

After the Defendant Graham refused permission to the Plaintiffs to file their grievance officially through the Defendant Local, thereafter at the same meeting, the Plaintiffs requested permission of the Defendant Graham in his said official positions to permit them to file such a grievance in their personal, individual capacities as members of the International and Local; and the Defendant Graham again refused permission to the Plaintiffs, and in addition, informed the Plaintiffs that if such a complaint were filed by them without his sanction, that

it would be processed through Allegheny section International Vice President, J. V. Kearney, who had jurisdiction of the Defendant Local and that the grievance, in accordance with customary procedures, would be referred to the Defendant Graham and that upon its receipt, he would not give any consideration to it.

43.

Despite the refusal of the Defendant Graham as aforesaid, the Forge Employees in May, 1958, addressed a personal grievance petition to William A. Calvin, President of the Defendant International, in which they set forth all of the facts hereinbefore stated and requested that there be a fair and impartial determination of the issue relating to their seniority rights in view of the activities of the Defendant Employer and of the Defendants Wiles and Graham and the Defendant Iron Works Employees, as hereinbefore mentioned, and the proposed combining of the seniority lists.

44.

Thereafter, on June 7, 1958, at a special meeting of the Defendant Local, the Defendant Graham bitterly reprimanded the Forge Employees for having filed the personal grievance petition with the International President. In addition, the Defendant Graham, as presiding officer, refused the Plaintiff Martin and other members of the Forge Employees present, the right to verbally explain their action in having forwarded their petition to the International President, making unwarranted personal attacks on various members of the Forge Employees who had signed the petition, and requested, urged and obtained

a favorable vote from the Iron Works Employees present, who greatly outnumbered the Forge Employees present, to give no further consideration to the seniority rights and complaints of the Forge Employees in any respect.

45.

After the grievance petition of the Forge Employees was received by the International President, William A. Calvin, it was forwarded by him to J. V. Kearney, International Vice President in charge of the Alleghony section, for investigation and processing.

46.

On June 9, 1958, the said Vice President conducted a hearing with relation to the said grievance petition at Titusville by meeting during much of the day with the Defendants Graham and Wiles and the seven (7) committeemen of the Iron Works Employees to which meeting none of the Forge Employees' committeemen were invited or had any notice thereof, no attempt being made to notify any of the said Forge Employees' committeemen until late in the day, as a result of which only two (2) received notice in time to appear.

47.

Upon the two (2) Forge Employees' committeemen appearing at the said hearing, they were not permitted to give any explanation or to relate any of the facts of the grievance petition forwarded by the Forge Employees to the International President, by reason of the constant interruptions by the Defendant Graham, who used violent, obscene and vituperative language toward the Forge Employees generally, and the said committeemen specific-

ally, in denouncing them for having forwarded the said grievance petition to the International President in the face of his refusals above-mentioned; and in addition, the Defendant Graham stated that he would institute expulsion proceedings against certain of the Forge Employees who had participated in forwarding the said grievance petition.

48.

No further proceedings were held with relation to the said grievance petition, nor was there any disposition made thereof to the knowledge of any of the Forge Employees.

49.

During the regular June, 1958, meeting of the Local, the Defendants Graham and Wiles informed the Plaintiff Martin that they were preferring expulsion charges against him on the ground that, while an officer, Treasurer of the Local, he had affixed his signature along with other Forge Employees to the said grievance petition.

50.

In September, 1958, as a result of the continued activity of the Defendant Employer in transfering machinery and work from the Forge Division Shop to the Iron Works Division Shop and the Perry Forge Shop and in the hiring of new employees to work in the said Shops and the furloughing of the Forge Employees, as aforesaid, the number of Iron Works Employees who were employed had been increased to approximately two hundred fifteen (215), while the number of the Forge Employees who were employed had been reduced to approximately thirty-two (32).

51.

During the week of September 8, 1958, various grievances filed by the Iron Works Employees that they had been requested to work out of classification by the Defendant Employer were duly processed in accordance with the provisions of the 1957 Agreement. On or about January 10, 1959, the hearing arbitrator dismissed all of the said grievances on the ground that, notwithstanding the provisions of the 1957 Agreement relating to working in classification, the Employer had proved an established practice on the part of the Iron Works Employees of disregarding the said provisions and working out of classification when requested by the Defendant Employer.

52.

On or about January 19, 1959, the Defendant Employer, through its Personnel Director Hilliard, presented to the Defendant Local, through its then officers, in writing, a proposal to establish a new general combined seniority list, which proposal was as follows:

> "The Company proposes that all Forge Weldment Employees coming in the scope of the Agreement signed June 19, 1957, whether actively employed or on layoff, who still retain Seniority rights with the Company, shall be added to the bottom of the Iron Works Seniority list, Maintaining their respective Forge Weldment Seniority position.
>
> "The revised Seniority list shall then be known as the Seniority list for both Divisions coming under the current Agreement.

"All Weelment employees placed on the Iron Works Seniority list shall retain full credit for length of service for vacation recall rights and all other benefits."

53.

The said proposal of the Defendant Employer was presented for consideration at the regular January, 1959, meeting of the Local, by its newly elected President, Gerald A. Sager, who ruled that only the Forge Employees were entitled to vote on it, with the result that it was overwhelmingly rejected.

54.

When the said rejection was brought to the attention of its Personnel Director Hilliard, he acting on behalf of the Defendant Employer, insisted that the matter be resubmitted for another vote by the membership of the Local, in order that he could arrange to have sufficient votes cast in favor of it to assure its adoption.

55.

As a result of all of the aforesaid improper, unfair and discriminatory actions of the Defendant Employer and the Defendants Wiles and Graham and the Defendant Iron Works Employees, a representative group of the Forge Employees, two (2) of whom were the Plaintiffs, John C. Martin and Melvin D. Patterson, on February 18, 1959, filed, under oath, unfair labor practice charges against the Defendant Employer and the Defendant Local with the National Labor Relations Board District Office at Pittsburgh, Pennsylvania, which has territorial jurisdiction over such complaints.

56.

Thereafter, although the said representative group, personally and on behalf of the Forge Employees, attempted to duly process the said charges, they were finally advised and informed by a duly constituted representative of the National Labor Relations Board at the Pittsburgh District Office that under the National Labor Relations Act, the matters complained of were not within its jurisdiction; that no relief could be granted to them and recommended that the said complaints be withdrawn, with which recommendation the Forge Employees complainants complied.

57.

Shortly after the filing of the charges with the National Labor Relations Board, as above mentioned, the Defendant Graham, as District Representative of the International, and Gerald A. Sager, the then newly elected President of the Local—without the filing of any charges, or the holding of any hearing or trial—summarily removed the Plaintiffs Martin and Patterson and two (2) other Forge Employees from their various offices in the Local, because they had signed the above mentioned N.L.R.B. charges, which action of the Defendant Graham and the said Gerald A. Sager, was illegal, improper, arbitrary and contrary to the provisions of the International Subordinate Lodge Constitution.

58.

In addition, the Defendant Graham and the said Gerald A. Sager filed charges for expulsion from the union against the abovementioned members of the Forge Employees, because they had filed the said charges before

the National Labor Relations Board, although the said expulsion charges were later dismissed upon the directions of the International Headquarters, by reason of the illegality of such action of the Defendant Graham and of the said Gerald A. Sager.

59.

As of April 1, 1959, there were no operations being carried on by the Defendant Employer at the Forge Shop, and all Forge Employees had been furloughed by the Employer; at the same time, the machines and orders on which the Forge Employees customarily worked were being serviced at the Iron Works Shop and the Perry Forge Shop by Iron Works Employees, most of whom were still employed, and many of whom had much less seniority than the Forge Employees, particularly those Iron Works Employees who had been employed since August of 1957, as above-mentioned.

60.

In early April, 1959, the Defendant Employer and the Defendant Local began negotiating a new collective bargaining agreement to become effective after May 31, 1959, during which negotiations, the Defendant Employer's representatives informed the representatives of the Defendant Local that unless they first disposed of the "seniority issue" in accordance with the Employer's proposal of January 19, 1959, above set forth, it would refuse to further negotiate and would bring to a close all of its operations at Titusville.

61.

By reason of the said demand made by the Defendant Employer, a special meeting of the Defendant Local was

held on May 2, 1959, at which—at the special urging of the Defendants Graham and Wiles—the Defendant Local, including the Iron Works Employees who had been newly employed since August, 1957, and who outnumbered the Forge Employees, approved the Employer's proposal, adopting a consolidation plan, under which, from May 1, 1959, the bargaining unit would have a general seniority list, to be known as the Iron Works Seniority List, in which the seniority of all Forge Employees would begin as of May 1, 1959, regardless of length of service in the unit, and contrary to the terms of the existing 1957 Agreement, which did not terminate until May 31, 1959.

62.

Following the said action by the Defendant Local, on or about May 18, 1959, the Forge Employees appealed in writing to Russell K. Berg, International Vice President, at International Headquarters, who was then acting on behalf of the International President, William A. Calvin, in his absence, for an investigation into the activities of the Defendant Local and the Defendant Employer, hereinbefore averred, culminating in Defendant Local's action of May 2, 1959, and particularly as they affected the Plaintiffs' seniority and related rights.

63.

The said appeal was formally made to the said International Vice President Berg, in accordance with previous directions given by him to Melvin D. Patterson, one (1) of the Plaintiffs herein, after he had personally reported at International Headquarters at Kansas City, Kansas, on behalf of the Forge Employees, all of the hereinbefore stated facts. The said formal appeal in-

cluded a series of affidavits, executed by the various Forge Employees, verifying all of the facts hereinbefore averred by the Plaintiffs.

64.

Acting on the aforementioned written appeal, International Vice President Berg specially assigned International Vice President Precht of Denver, Colorado, to make an investigation of all of the activities of the Defendant Employer, the Defendant Local, and the Defendants Graham and Wiles hereinbefore averred by the Plaintiffs.

65.

On or about July 15, 1959, International Vice President Precht, after having made his investigation, called and conducted a special meeting of the Defendant Local in Titusville and informed the membership that his investigation revealed that the union leadership during the period following the execution of the 1957 Agreement had been very deficient; that the actions of the Defendant Local, its officers and the Iron Works Employees with relation to the seniority rights of the Forge Employees, including the Defendant Local's action of May 2, 1959, relating to the same, were illegal, improper and contrary to established union policy; and that the Forge Employees were entitled to have their seniority rights restored, or, at least, to receive their severance pay if the Forge Shop had been closed permanently.

66.

In addition, International Vice President Precht informed the membership of the Defendant Local that he

would recommend to the International President that the action of May 2, 1959, of the Local with relation to seniority, be overruled and rescinded; that all of the seniority rights of the Forge Employees be restored; that the Local be ordered to combine the seniority rosters of the two Divisions straight across, with no loss of seniority to any members involved; and further, that by August 15, 1959, the final decision on this matter would be forwarded to the Forge Employees and the Local.

67.

Notwithstanding the aforementioned representation of the International Vice President, no further report has ever been received by the Forge Employees, or anyone on their behalf.

68.

In the fall of 1959, the Plaintiffs ascertained that the Defendants International and Local had executed the 1959 Agreement, to be effective for the period from June 1, 1959, through July 31, 1960, in which the plan of seniority adopted by the Defendant Local on May 2, 1959, and the subject of the Forge Employees' complaint to the International, as above mentioned, was formally put into effect.

69.

The Plaintiffs aver that they have exhausted all and every remedy and procedure available to them under the International Lodge Constitution and the Subordinate Lodge Constitution and Bylaws of the Defendants International and Local—all to no avail—notwithstanding the abovementioned great and grievous wrongs to them and the illegal denial of their rights which have continued

during the entire period from May 1, 1959, in support of which, the Plaintiffs aver as follows:

(a) The International Subordinate Lodge governing the Local and the Bylaws adopted by the Local thereunder contained no specific provisions for the processing of the matters hereinbefore complained of by the Plaintiffs, although, as above averred, the Plaintiffs attempted in every reasonable manner to have their complaints properly considered and processed by the Local, but were not permitted to process the same by the arbitrary and improper action of the Defendant Graham, acting both as President of the Local and as International Representative.

(b) The International Lodge Constitution sets forth no specific procedures for the processing of the matters complained of by the Plaintiffs, as hereinbefore averred, the International Constitution providing only generally for a Committee on Appeals and Grievances which is to report to the International meeting in convention every four (4) years; and providing further that when the International is not in convention session, the Executive Council of the International, which is composed of the President and the sixteen (16) International Vice Presidents, is to have full power to consider and determine all appeals and grievances referred to it by any subordinate or district lodge, or by any subordinate or international officer. References to the pertinent sections of the International Lodge Constitution are set forth in Exhibit H, which is attached hereto and made a part hereof.

(c) The Plaintiffs further aver that because the improper and arbitrary actions of the Defendants Wiles and Graham, as above set forth, made it impossible for them to proceed through the Subordinate Lodge, they proceeded through personal appeal to the President, who is the chief executive officer in charge of all brotherhood matters, and who assigned the said matter for investigation to the International Vice President Precht, as above set forth.

(d) Although more than a reasonable time has elapsed within which to finally determine the said matter, particularly in view of the subject of the appeal and the immediate and continuing losses which were threatened to the Plaintiffs, and which the Plaintiffs have sustained during the entire period from May 1, 1959, yet, no formal disposition has been made thereof within the knowledge of any of the Plaintiffs, other than they have learned of the execution of the 1959 Agreement, incorporating the complained of seniority provision.

(e) The Plaintiffs further aver that they have no knowledge, and have been unable to ascertain, whether or not the Executive Council of the International has had any meeting since July 15, 1959, the date of the meeting of the Local called by International Vice President Berg, as above mentioned, and when the International will have its next convention following the convention held by it in May, 1957.

(f) The Plaintiffs further aver that in view of all of the foregoing, they have exhausted every practical procedure open to them as members of the

Defendants Local and International with reference to their complaints and grievances hereinbefore averred.

70.

The Plaintiffs further aver, upon information which they believe to be true, that the Defendant Employer and the Defendants Local and International have agreed to, and executed, a subsequent agreement, effective August 1, 1960, following the termination date of the 1959 Agreement on July 31, 1960, for a period which is unknown to the Plaintiffs, but which is in the knowledge of the Defendants, in which there is again incorporated the seniority provisions set forth above of the 1959 Agreement.

71.

The Plaintiffs further aver that from about April 1, 1959, all of the Forge Employees have been laid off, and continued to be laid off, by the Employer for a period of approximately fourteen (14) months, the work force at the Forge Division having been gradually reduced from August, 1957, to that date, when all operations at the Forge Shop had ceased; and that most of the Forge Employees laid off for the said fourteen (14) month period would have been employed during the entire period, and many of the Forge Employees would have been employed for a large portion of the said period, excepting for the complained of actions of the Defendants above-mentioned, including the application of the seniority provisions of the 1959 Agreement.

72.

The unlawful and improper actions of the Defendants Employer, International, Local and Graham, as above set forth, have caused and are causing great irreparable loss to the Plaintiffs and have been and are depriving them of their seniority status with:

(a) Loss of wages for work which they were entitled to perform, but which they were unable to perform because of their being improperly and illegally laid off, with members of the Iron Works Employees—having much less years of service—being permitted to work in their stead;

(b) Loss of vacation pay, to which they would otherwise be entitled, except for their having been improperly laid off, as above set forth;

(c) Loss of their rights on reinstatement and advancement;

(d) Loss of their accumulated severance pay rights.

73.

The Plaintiffs also aver, in the alternative, that the actions of the Defendant Employer, in transferring the work and machinery from the Forge Division Shop, culminating in termination of its operations there, on or about April 1, 1959, with the laying off of all of the Forge Employees who would otherwise have been employed there, constituted a permanent discontinuance of the department within the terms of Section 1 of Article XVIII of the 1957 Agreement, set forth in Exhibit D

hereof, the Plaintiffs averring in the alternative that they are, therefore, at least, entitled to severance pay provided for under Article XVIII of the [illegible] agreement, which was then in effect; and that no such payments have ever been made to any of them.

74.

The Plaintiffs aver that in connection with the great irreparable loss that they have suffered, and will continue to suffer as above averred, that they have suffered great financial loss, the exact amount of which cannot be determined until the legal issues arising in this action, including the right of the Plaintiffs to any severance pay, have been finally determined, and for which loss they aver they are entitled to be compensated for the full amount thereof, together with interest at a legal rate for the delay in payment thereof.

75.

The Plaintiffs aver that they have no adequate remedy at law, and that if they do not obtain the relief hereinbefore requested, they will continue to suffer great irreparable loss, and to be deprived of their seniority status, including the loss of employment and loss of rights on lay-off, reinstatement, advancement, vacation pay, and severance pay.

76.

The aforementioned acts of the Defendants International and Local, resulting in the loss of the Plaintiffs' seniority status, as above set forth, were improper and wrongful in the following respects:

(a) The plan for the consolidation of the seniority lists, adopted by the said Defendants and incorporated in the 1959 Agreement, was not fair and reasonable under all of the circumstances.

(b) The plan for the consolidation of the seniority lists, adopted by the said Defendants and incorporated in the 1959 Agreement, was arbitrary and discriminatory in that, without any proper cause or justification, and without any reasonable basis, the Forge Employees were caused to lose all of their seniority status to the advantage of the Iron Works Employees, many of whom had accumulated much less seniority.

(c) The Defendants Local and International breached their duty to fairly represent all members of the bargaining unit for which they were the exclusive statutory bargaining agent, including the minority group, the Forge Employees, the Plaintiffs herein.

(d) The Defendants Local and International breached their fiduciary duty owed to all members of the unit on whose behalf they were bargaining agent, and specifically the Plaintiffs, to fairly, honestly, impartially, and with proper fidelity, negotiate and otherwise act, on their behalf.

(e) The actions of the Defendant Local, approved by the Defendant International, were directed and executed by the Defendants Graham and Wiles, the duly designated executive officers of the Defendant Local, who, because of their open hostility,

personal animosity and selfish motivation, as hereinbefore averred, treated the seniority and other rights of the Forge Employees—a minority group of the bargaining unit—with bad faith, fraud and discrimination, in a deliberate attempt to deprive them of all their rights as members of the bargaining unit.

(f) The Defendant Local acted in concert with the Defendant Employer, by engaging in the activities hereinbefore averred, to serve the interests and objectives of the Employer, to the detriment of the Plaintiff Forge Employees, in disregard of all of the duties owed to them as members of the bargaining unit, for which it was bargaining agent, the said actions of the Defendant Local being ratified by the Defendant International.

77.

The aforementioned acts of the Defendant Employer, concurrent with the acts of the Defendants International and Local, resulting in the loss of the Plaintiffs' seniority status, as above set forth, were improper and wrongful in the following respects:

(a) The Defendant Employer proposed, urged and then demanded the plan for the consolidation of the seniority lists, adopted by the Defendants Local and International and incorporated in the 1959 Agreement, which plan was not fair and reasonable under all of the circumstances.

(b) The Defendant Employer proposed, urged and then demanded the plan for the consolidation of the seniority lists, adopted by the Defendants Local

and International and incorporated in the 1959 Agreement, which plan was arbitrary and discriminatory in that, without any proper cause or justification, and without any reasonable basis, the Forge Employees were caused to lose all of their seniority status to the advantage of the Iron Works Employees, many of whom had accumulated much less seniority.

(c) The Defendant Employer, by its gradual removal of the work and machinery from the Forge Shop to the Iron Works and Perry Forge Shops, and the hiring of new men to do the said work, while laying off the Forge Employees as above mentioned, committed continuing and flagrant breaches of the seniority provisions of the 1957 Agreement.

(d) The just mentioned activities of the Defendant Employer, together with its requests, urging, and then demands for a combined seniority list, were either calculated to, or were likely to, and did, create dissension and strife within the two Divisions of the bargaining unit, engendering hostility and personal animosity which made impossible a fair, honest and impartial determination of the seniority rights issue.

(e) The just mentioned activities of the Defendant Employer, together with its requests, urging, and then demands for a combined seniority list, and representations made to the various Forge Employees in connection therewith, as above mentioned, were either calculated to, or were likely to, and did, cause a gradual strengthening of the representative strength of the Iron Works Employees, with a correlative weakening of the representative strength of the

Forge Employees, which made it impossible for proper, fair and honest consideration to be given to the seniority rights of the Forge Employees.

(f) All of the abovementioned activities of the Defendant Employer were calculated by it to serve the interests and objectives of the Defendant Employer of depriving the Forge Employees of all their rights as members of the bargaining unit.

(g) The Defendant Employer influenced, encouraged and acted in concert with the Defendant Local in its breaches of the duties owed by it to all of the members of the unit as bargaining agent, as above set forth.

(h) The Defendant Employer improperly interfered with the seniority status of the Forge Employees.

78.

The aforementioned acts of the Defendant Graham as President of the Defendant Local, and District Representative of the Defendant International, concurrent with the acts of the Defendant Employer, resulting in the loss of the Plaintiffs' seniority status, as above set forth, were improper and wrongful in the following respects:

(a) The Defendant Graham deliberately refused to perform his duties in the said offices by refusing to process the complaints of the Forge Employees and according them due process with relation thereto, and in the other instances hereinbefore mentioned.

(b) The Defendant Graham improperly and illegally performed the duties of the said offices, in

performing the said duties with hostility, personal animosity, and selfish motivation, as heremebefore averred, and in treating the seniority and other rights of the Forge Employees—a minority group of the bargaining unit—with bad faith, fraud and discrimination, in a deliberate attempt to deprive them of all of their rights as members of the bargaining unit.

(c) The Defendant Graham improperly and illegally performed the duties of the said offices by acting in concert with the Defendant Employer, as above set forth, to serve the interests and objectives of the Employer to the detriment of the Plaintiff Forge Employees, in disregard of the duties owed to them by the Local as bargaining agent.

(d) The Defendant Graham improperly and illegally performed the duties of the said offices in exercising the authority of his said offices, and using his position of leadership, to encourage and direct the Local to commit the various wrongful acts set forth in paragraph 76 hereof.

79.

The Plaintiffs aver that this action is brought against the Defendant Iron Works Employees, as a class, in order that the seniority rights status of the Forge Employees, as against them, may be properly and legally adjudicated; and as to all of the other Defendants, this action is brought against them, jointly and severally, for all relief to which the Plaintiffs are entitled, including such damages and other recoveries as may be legally determined.

By reason of all of the foregoing, the Plaintiffs request the Court:

A. To order the Defendants to return the Plaintiffs to their rightful positions, classifications, seniorities and related rights in the bargaining unit, including all previous rights belonging to each of the Plaintiffs under the 1957 Agreement, and as the same may have been extended or amended and in effect as of May 1, 1959, and thereafter.

B. To order the Defendants Employer, International, Local and Graham to pay to the Plaintiffs the full compensation for the loss of wages and vacation pay which they are entitled to receive, by reason of loss of work from their being improperly and illegally laid off and otherwise being denied of their seniority rights, and or such severance pay as may be determined is due and payable to the Plaintiffs, or any of them, together with six (6%) per cent interest thereon.

C. To award to the Plaintiffs all costs and reasonable attorney fees for the prosecution of this action.

D. To award to the Plaintiffs such punitive damages as the Court may deem proper for the grossly wanton disregard of their legal rights by the Defendants Employer, International, Local and Graham.

E. To enter an appropriate decree so that the Defendants Employer, International, Local and Graham will be restrained, prohibited, and inhibited from invoking any retaliatory action against any of the

Plaintiffs by reason of their having instituted this legal action.

F. To enter an appropriate decree so that the Defendants Employer, International, Local and Graham will be restrained, prohibited and inhibited from doing any act or thing in derrogation of the seniority and other related rights of the Plaintiffs as members of the bargaining unit, and as members of the Defendants International and Local.

G. To retain jurisdiction of this action to make certain that the decree of the Court is obeyed.

H. To grant such other and further relief to the Plaintiffs as it deems appropriate.

Barco and Barco
By George J. Barco,
Attorneys for Plaintiffs

(Affidavit)

PLAINTIFFS' EXHIBIT A

FORGE EMPLOYEES PARTICIPATING IN ACTION

Name	*Seniority Date*
BAUER, Charles M.	September 19, 1945
BIENIO, Bogdan	May 21, 1951
BORTZER, Mont R.	April 24, 1951

Complaint
Plaintiffs' Exhibit A

Name	*Seniority Date*
BROWN, Burton W.	April 23, 1951
CHAPPEL, Homer R.	August 27, 1951
COLLINS, Hazen F.	May 7, 1936
COPELAND, Donald C.	April 30, 1956
COSMARK, Francis J.	July 12, 1945
CRAMER, Reed L.	May 5, 1947
DALY, Robert L.	August 20, 1951
DAUM, William E.	1946 or 1947
DUFFY, Richard W.	November 20, 1950
FOLEY, Kenneth A.	December 28, 1948
GILSON, Calvin C.	March 31, 1947
GRAHAM, J. Earl	December 13, 1955
GRANT, Alfred C.	January 9, 1956
GRAY, Donald F.	May 28, 1951
GRAY, G. Louis	June 11, 1956
GUNTRUM, Tracy E.	November 27, 1945
HATCHER, Hayes E.	September 24, 1951
HOLLABAUGH, Burton J.	April 16, 1946
HOLLAND, Francis J.	February 16, 1948
HOMAN, Carl V.	July 23, 1946
HUNT, Alfred W.	February 1, 1951
IRWIN, Luther F.	January 24, 1955
JONES, Frederick A.	September 1, 1955
JORDAN, Logan J.	August 30, 1951
KLINE, Ralph M.	February 6, 1956
KOLACEK, William H.	December 30, 1947
KOLOBITZ, John R.	March 10, 1947
LABOW, Paul	1946
LOONEY, James F.	November 29, 1950
LOWICKI, Henry J.	April 17, 1956
MADDEN, Charles L.	November 22, 1945

Name	*Seniority Date*
MANGEL, John W.	September 10, 1946
MARTIN, John C.	April 1, 1947
MELLON, Emery C.	April 21, 1947
MOORE, Lloyd R.	September 16, 1946
MORONSKI, Anthony	May 25, 1948
MORONSKI, Frank	March 10, 1952
MORONSKI, John	May 14, 1947
MORONSKI, Joseph	November 23, 1953
MORONSKI, Leo	July 27, 1948
MORRIS, Edwin	July 22, 1947
McALEVY, Norman L.	January 23, 1956
McCUNE, William W.	February 9, 1948
McELHANEY, Donald S.	January 22, 1947
McKEE, Ralph	September 1, 1955
NELSON, Playford A.	October 27, 1955
PACHNICK, Henry F.	May 7, 1956
PATTERSON, Melvin D.	December 19, 1955
PEEPLES, Clifton C.	February 6, 1956
PIER, Donald J.	January 23, 1956
PRICE, Francis H.	January 23, 1956
RHOADES, William C.	September 6, 1946
RYBKA, John	December 29, 1947
SHORTS, Frank M.	August 28, 1951
SINES, Clifford W.	July 31, 1951
SLAGTER, Charles J.	July 22, 1946
SLATER, Charles E.	January 8, 1953
SLATER, Francis J.	January 17, 1956
SOMERVILLE, Wesley A.	November 18, 1946
SOPHER, Lawrence M.	November 15, 1945
SQUIRE, Kenneth C.	November 27, 1951
STOKES, Emerson E.	July 11, 1951

Complaint
Plaintiffs' Exhibit B

Name	*Seniority Date*
TENNEY, Robert G.	May 28, 1951
VANDERHOFF, Leon L.	May 16, 1956
WITHERALL, James J.	October 31, 1955
WRIGHT, Owen D.	September 24, 1945
ZAHNER, Richard W.	June 11, 1956

PLANTIFFS' EXHIBIT B

ARTICLES OF AGREEMENT BETWEEN STRUTHERS WELLS CORPORATION AND INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS OF AMERICA AND LOCAL LODGE 636, A.F.L.-C.I.O., EXECUTED JUNE 19, 1957

ARTICLE II

SENIORITY

Section 1. Seniority is defined as follows: (a) Length of continuous service with the Corporation for vacation purposes. (b) Length of continuous service in any and all classifications within the bargaining unit in all departments and shops of the plant, for purposes of lay-off, reinstatement and advancement within the jurisdiction of the Union. Each Division is to maintain a separate seniority roster. An Employee may be transferred by the

Company from one division to another on a temporary basis for a period of not to exceed sixty (60) days without any change in his seniority status. Where an employee is so transferred for a period of over sixty (60) days, such transfer shall be deemed permanent unless an extension of said sixty (60) days shall be agreed to between the Company and the Union. However, in no case is an Employee to be transferred from one Division to another while an Employee is on lay-off from that Division or who holds or has previously held the same classification of the employee to be transferred.

Section 2. New Employees shall be considered as probationary Employees for a period of thirty (30) days from the date of employment but if and when such probationary Employee has been employed thirty (30) days, he shall become a regular Employee and shall be given seniority credit from the date of employment. During the period of thirty (30) days in which he shall have no length of service, as herein provided, the Employer may suspend or discharge him for any lawful reason whatsoever; and no claim will be made by him or the Union or any of its representatives that the suspension or discharge was improper.

Section 3. Should it become necessary to make a lay-off or reduce the force, seniority and qualifications within the unit shall prevail. A lay-off notice of three working days will be given except in any emergency, including breakdown, beyond the control of the Company. The Employee or Employees affected may elect to take a lay-off in the classification held at the time of the lay-off or be

transferred to another classification, providing at that time he holds seniority rights over another Employee in the said classification and had or since attained sufficient skill to perform the duties of the Employee he replaces. In exercising seniority it is definitely understood that the Employee must be qualified to perform the work required. It is agreed that the above does not apply when the lay-off is temporary. "Temporary" is defined as not exceeding two (2) working days. However, in the event of any such temporary lay-off, the employee to be so laid off will be notified thereof by the Company and may, upon such notification, if he desires, elect either to accept the lay-off, or to exercise his seniority rights against any employee who has less seniority and is working in a classification held or previously held by such employee. Such election must be made by the employee at the time of such notification and any such election so made shall be binding upon him and not subject to change.

Section 11: Employees who have been laid off will be considered for any job openings in either plant before new Employees are hired.

PLAINTIFFS' EXHIBIT D

ARTICLES OF AGREEMENT BETWEEN STRUTHERS WELLS CORPORATION AND INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS OF AMERICA AND LOCAL LODGE 636, A.F.L.-C.I.O., EXECUTED JUNE 19, 1957

ARTICLE XVIII

SEVERANCE PAY

Section 1. When in the sole judgment of the Corporation, it decides to close permanently a plant or discontinue permanently a department of a plant or a substantial portion thereof and terminate the employment of individuals, an employee whose employment is terminated directly or indirectly as a result thereof because he was not entitled to other employment under the provisions of Article II, Seniority, of this Agreement and Section 2, below, shall be entitled to a severance allowance in accordance with and subject to the following provisions.

Section 2. Such an Employee to be eligible for a severance allowance shall have accumulated three (3) or more years of continuous Company service and computed in accordance with Article II, Seniority, of this Agreement.

Section 3. In lieu of severance allowance, the Corporation may offer an eligible employee a job, in any job

classification for which he is qualified, in other shops or departments of the plants. The Employee shall have the option of either accepting such new employment or requesting his severance allowance.

Section 4. As an exception to Section 3, of this Article, an Employee otherwise eligible for severance pay who is entitled under Article 11, Seniority, to a job in the same job classification in another part of the plant shall not be entitled to severance pay whether he accepts or rejects the transfer. If such transfer results directly in the permanent displacement of some other employee, the latter shall be eligible for severance pay provided he otherwise qualifies under the terms of this Article.

Section 5. An eligible individual shall receive severance allowance based upon the following weeks for the corresponding continuous service:

Continuous Company Service	*Weeks of Severance Allowance*
3 years, but less than 5 years	4
5 years, but less than 7 years	6
7 years, but less than 10 years	7
10 years, or more	8

Allowance: A week's severance allowance shall be forty (40) hours straight time pay at the rate the Employee is receiving at the time of termination. Payment shall be made in a lump sum at the time of termination.

Section 6. Severance allowance shall not be duplicated for the same severance, whether the other obligation

arises by reason of contract, law or otherwise. If an individual is or shall become entitled to any discharge liquidation, severance or dismissal allowance or payment of similar kind by reason of any law of the United States of America or of the State of Pennsylvania, the total amount of such payments shall be deducted from the severance allowance to which the individual may be entitled under this Article, or any payment made by the Corporation under this Article may be offset against such payments. Statutory unemployment compensation shall be excluded from the non-duplication provisions of this Section.

PLAINTIFFS' EXHIBIT E

ARTICLES OF AGREEMENT BETWEEN STRUTHERS WELLS CORPORATION AND INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS OF AMERICA AND LOCAL LODGE 636, A.F.L.-C.I.O., EXECUTED UNDER SEPTEMBER 23, 1959

ARTICLE II

SENIORITY

Section 1. Service with the Company shall be defined as follows: (a) Length of continuous unbroken service with the Company for vacation purposes, which, for the purposes of this Agreement, shall hereafter be referred to as "length of service." (b) Length of continuous un-

broken service with the Company within the bargaining unit, in all departments and shops of the plants, for purposes of lay-off, recall, shift preference and advancement within the jurisdiction of the Union, shall, for the purposes of this Agreement, be hereafter referred to as "seniority." (c) Continuous unbroken service, as user in this Section 1, shall be deemed to mean service not interrupted by discharge or other termination.

Section 2. The separate seniority rosters provided for in prior Agreements are hereby eliminated. All employees of the Company whose names appear on the Forge Weldment Division seniority list as of May 1, 1959, shall be placed at the bottom of the present Iron Works Division seniority list, in their respective classifications, retaining, on such combined seniority list, their former positions with respect to each other. The combined seniority list shall henceforth be deemed to be one seniority list and shall be known as the "seniority list."

Such former Forge Weldment employees shall retain all "length of service" for vacation purposes, but their "seniority" shall become effective as of May 1, 1959. In case of reduction of the Company's work force, former Forge Weldment employees who have been added to the new seniority list, as provided for herein, shall be subject to lay-off before former Iron Works Division employees whose names appear on the said new seniority list. Since all former Forge Weldment employees included in the new seniority list have the same "seniority" date, they shall be subject to layoff in accordance with their position with respect to each other, commencing with the employee at the bottom and working upward.

All new employees hired on or after May 1, 1959, shall be placed on the seniority list in their respective classifications, below the above referred to former Forge Weldment employees.

The Company may assign any employee on the seniority list to work as the Company finds him qualified in his job classification in any place at any time without affecting his seniority. However, in case the assignment is to work in a location away from what is generally known as the Iron Works and the employee declines to accept the assignment, he shall not be required to accept such assignment unless he is the most junior-in-seniority qualified employee then working. If he is the most junior-in-seniority qualified employee then working, he shall perform his work as assigned in such case.

Section 3. New Employees shall be considered as probationary employees for a period of thirty (30) days from the date of employment but if and when such probationary Employee has been employed thirty (30) days, he shall become a regular Employee and shall be given seniority credit from the date of employment. During the period of thirty (30) days in which he shall have no length of service, as herein provided, the Employer may suspend or discharge him for any lawful reason whatsoever, and no claim will be made by him or the Union or any of its representatives that the suspension or discharge was improper.

Section 4. Should it become necessary to make a layoff or reduce the work force, seniority and qualifications within the unit shall prevail. A layoff notice of three (3) working days will be given by the Company, except in

any emergency, including breakdown, beyond the control of the Company. If a layoff notice of less than three (3) days is given, the employee shall nevertheless be provided with three (3) days work or paid in lieu thereof. The employee, or employees affected may elect to take the layoff in the classification held at the time of receipt of the layoff notice, or exercise his seniority to bump into another classification, provided, at that time, he holds seniority rights over another employee in said other classification and had sufficient skill to perform the duties of the employee he replaces. In exercising seniority it is definitely understood that the employee must be qualified to perform the work of the man he replaces, and if he proves to be not qualified after having so exercised his seniority rights, he shall be laid off without the three (3) day notice and shall not be recalled until his services are required in his regular classification. It is agreed that the three (3) day layoff notice provided above does not apply when the layoff is "temporary." "Temporary" is defined as not exceeding two (2) working days. However, in the event of such "temporary" layoff, the employee to be affected will be notified thereof by the Company, and may either accept such temporary layoff or exercise his seniority to bump any employee with less seniority and who is working in a classification held or previously held by the employee about to be "temporarily" laid off. Such election must be made by the employee at the time of notification of "temporary" layoff, and shall be binding upon him and not subject to change. It is agreed that the "temporary" and indefinite layoff procedures, provided for in this Section, cannot be invoked simultaneously.

PLAINTIFFS' EXHIBIT G

ARTICLES OF AGREEMENT BETWEEN STRUTHERS WELLS CORPORATION AND INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS OF AMERICA AND LOCAL LODGE 636, A.F.L.-C.I.O., EXECUTED JUNE 19, 1957

ARTICLE V

GRIEVANCE PROCEDURE

Section 1. Should any dispute or difference arise between the Employees or the Union and the Employer as to the intent, application or operation of any provision of this Agreement, such dispute or difference shall be settled forthwith in the following manner:

Step 1. Between the aggrieved Employee, Committeeman, Foreman of the Department involved and the Shop Superintendent.

Step 2. Between members of the Division Committee and the Personnel Director. Starting with this Step grievances are to be in writing and replied to in writing.

Step 3. Between the Grievance Committee and the Personnel Director. The Grievance Committee to have International Representative when desired.

Step 4. In the event the dispute or difference cannot be settled satisfactorily, request may be made

by either party for the services of the Pennsylvania State Mediation Service.

Step 5. In the event the matter is not satisfactorily settled through Step 4, then either party may request the Federal Mediation service for the appointment of an Arbitrator.

Section 2. The Arbitrator shall have the jurisdiction and authority to interpret, apply or determine compliance with the provisions set forth in the Agreement; however, the Arbitrator shall not have the jurisdiction to add to, detract from, or alter in any way the provisions of this Agreement.

Section 3. The decision of the Arbitrator shall be final and binding upon both parties to the Agreement.

Section 4. All expenses of the Arbitrator shall be borne equally by the Employer and the Union.

Section 5. Grievances must be submitted by the aggrieved Employee, employees, or Union within a reasonable time following the alleged incident.

Section 6. In the event a satisfactory settlement is not concluded within twenty (20) days between Steps 1 and 4, the matter shall within ten (10) days thereafter be disposed of in accordance with Step 5, Section 1, or the matter will be deemed closed.

Section 7. There shall be no strikes, work stoppages or slowdowns by the Union, or lockouts by the Employer during the life of this Agreement.

PLAINTIFFS' EXHIBIT H

INTERNATIONAL LODGE CONSTITUTION OF THE INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS

ARTICLE II

CONVENTION

Section 1. Conventions of this International Brotherhood shall be held every four (4) years, and the first Monday in May of such years shall be the date for the convening of the conventions, unless otherwise changed by referendum vote. . . .

Appointment of Committees and Their Duties

Section 9(a). The International President shall appoint the following Committees, to consist of not less than the following number of members:

Committee on Appeals and Grievances 11

Appeals and Grievances

Section 14. The Committee on Appeals and Grievances shall hear or receive written statements on the same and report thereon to the International Brotherhood Convention.

Complaint
Plaintiff's Exhibit H

ARTICLE III

Executive Council

Section 2. The Executive Council shall be composed of the International President and sixteen (16) International Vice-Presidents and it shall have executive and judicial authority as provided in Article I, Section 4 hereof.

Supervision by and Meetings of Executive Council

Section 4. The Executive Council shall have supervision over the International Brotherhood when not in convention session. Its meetings shall be held annually, unless conditions warrant special meetings. It shall have the power to pass on any subject, proposition, or grievance; and hear and determine all cases of appeal from the decisions and rulings of the District and Subordinate Lodges, or against any officer of the International Brotherhood or appointed representative. All decisions of the Executive Council shall be final.

Adjustment of Grievances

Section 5. The Executive Council, in conformity with the International Lodge Constitution and Subordinate Lodge Constitution, and with the Convention's Declaration of Policy as its guide, shall hear and determine all grievances referred to it by any Subordinate or District Lodge or by any Subordinate or International Officer, and shall recommend remedies or adjust the same as the gravity of the case may require.

Complaint
Plaintiffs' Exhibit II

ARTICLE V

DUTIES OF THE INTERNATIONAL PRESIDENT

Section 5. No individual member, or officer, or District, or Subordinate Lodge shall in any case where asserting a right allegedly growing out of his or its membership in this International Lodge, or any Subordinate Lodge thereof, resort to any civil court or any government agency, until the said member, or officer, or District, or Subordinate Lodge, shall have first exhausted the procedure for hearing, trial and appeal provided by the International Lodge Constitution and or the Subordinate Lodge Constitution. A violation of this Section will subject the individual member, or officer, to a trial and penalty in accordance with Article XIV of the Subordinate Lodge Constitution. A violation of this section by a District or Subordinate Lodge will subject said Lodge to the penalty of having its charter suspended or revoked in accordance with the procedure of Section 4 of Article V of the International Lodge Constitution, and the penalty of being fined in the sum equal to the expense that the party against whom said action was commenced shall be required to incur in defense thereof, and said sum, when collected, shall be paid to said party.

APPENDIX D

PRELIMINARY OJECTIONS

(Filed by Struthers Wells Corporation)

To the Honorable, the Judges of Said Court:

Comes now, Struthers Wells Corporation, one of the defendants in the above captioned case, by its attorneys undersigned and makes these preliminary objections to plaintiff's Complaint in Equity, moves the court for judgment and hereby assigns the following reasons therefor:

JURISDICTION

1. This Court does not have jurisdiction over the subject matter of this action, for the following reasons, among others:

1. Rights of Union Members and adjudication of matters pertaining to rights of individual Union Members in that capacity are determined under Federal and State administrative functions preempting the adjudicatory powers of this Court in such matters.

2. The allegations of the Complaint relate to matters arising under labor agreements between an Employer and a Union certified under and pursuant to Federal Law, and can be adjudicated only pursuant to that Federal law

which provides the National Labor Relations Board as the appropriate forum.

3. Alleged claims under the severance pay provisions of the labor agreements are not cognizable in this Court for the reasons above stated and because plaintiffs have failed to initiate or exhaust the remedies provided in the labor agreements.

4. This Court does not have the power to grant the prayed for relief, for to do so would require this Court to either reinstate a contract which all parties agree expired May 31, 1959, or to write a contract between the Company and the Union in violation of Federal Law respecting negotiation of labor contracts, or to decree that seniority shall no longer be deemed a bargainable issue between the Employer and the Company subject to approval of a majority of the membership of the Union, which decree would be in violation of Federal Law.

5. Plaintiffs have adequate remedies at law.

Wherefore, defendant, Struthers Wells Corporation, moves the Court to enter judgment in favor of defendant, Struthers Wells Corporation, and/or to dismiss the action, and for such other and further relief as defendant, Struthers Wells Corporation, is entitled to.

DEMURRER

---

11. The facts alleged in the Complaint do not state a cause of action at Law or in Equity against defendant, Struthers Wells Corporation, for the reasons, among others, that:

Preliminary Objections Filed by Struthers Wells Corp.

1. The action taken respecting the consolidation of the seniority lists was taken by a majority of the membership of the Local Union, and was therefore binding on plaintiffs.

2. Defendant International and defendant Local constituted the statutory collective bargaining agent representing plaintiffs and Struthers Wells Corporation was required by law to negotiate with said International and said Local and any agreements made by Struthers Wells Corporation were required by law to be with said International and said Local only and not with plaintiffs.

3. The 1959 Agreement, negotiated between Struthers Wells Corporation, defendant International and defendant Local, upon approval by a majority of the membership of said Local, was binding on plaintiffs.

4. The 1957 Agreement on which plaintiffs base their claims expired on May 31, 1959.

5. There was no contractual relationship between Struthers Wells Corporation and plaintiffs.

6. Claims of violation of rights of plaintiffs by working out of classification under the 1957 Agreement are admitted by the Complaint to have been found groundless by a duly appointed Arbitrator.

7. The allegations of the Complaint respecting removal of work from the Forge Division and or relocation of work operations by the Employer are immaterial and irrelevant because nothing in the labor agreements or in law requires the Employer to do any particular work at any particular place or location.

8. The Complaint fails to allege that Struthers Wells Corporation, in its sole judgment, has or has decided to close the Forge Division.

9. The Complaint fails to allege exhaustion of plaintiffs' remedies under the 1957 and 1959 Agreements for any alleged violation of the severance pay provisions.

10. Allegations of the Complaint alleging improper action of representatives of Struthers Wells Corporation are immaterial and irrelevant because the Complaint admits that the seniority provisions of the 1959 contract were approved by the membership of the Local Union.

11. The Complaint fails to allege any conspiracy or concerted action against plaintiffs by Struthers Wells Corporation and the other defendants.

12. The Complaint fails to allege that Struthers Wells Corporation in any way interfered with or prevented plaintiffs from following any and all available procedures within the Union organization for redress of any alleged wrongs committed by the Union or any officers or members thereof.

13. The Complaint and exhibits disclose that plaintiffs were not in any way injured by the consolidation of the seniority lists, but were, instead, benefited.

14. The Complaint discloses that the real controversy between the Forge Works employees (plaintiffs) and the Iron Works employees (defendants) was not that seniority rights of plaintiffs were being destroyed, but that the plaintiffs, a minority group, desired and demanded that the seniority of a large number of Iron Works employees be made secondary to that of the minority group.

15. Plaintiffs have adequate remedies under administrative procedures and at law for any alleged wrongs arising out of a labor agreement or agreements and or negotiations for the same, and or out of alleged misconduct of Employer or Union representatives.

Wherefore, defendant, Struthers Wells Corporation, moves the Court to enter judgment in favor of defendant, Struthers Wells Corporation, and or to dismiss the action insofar as Struthers Wells Corporation is concerned, and for such other and further relief as defendant, Struthers Wells Corporation, may be entitled to.

APPENDIX E

PRELIMINARY OBJECTIONS

(Filed by International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers of America (A.F.L.-C.I.O.); Local Lodge 636 thereof; Russell A. Graham, Individually; Lee A. Reisinger, Donald E. Chapel and Harry A. Wiles, Individually, and as Representatives of a Class

To the Honorable, the Judges of Said Court:

Comes now, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers of America AFL-CIO; Local Lodge 636 thereof; Russell A. Graham, individually; Lee A. Reisinger, Donald E. Chapel and Harry A. Wiles, individually, and as representatives of a class by their attorneys undersigned and make these preliminary objections to plaintiff's Complaint in Equity, move the court for judgment and hereby assign the following reasons therefor:

JURISDICTION

I. This Court does not have jurisdiction over the subject matter of this action, for the following reasons, among others:

1. Rights of Union Members and adjudication of matters pertaining to rights of individual Union Members

in that capacity are determined under Federal and State administrative functions preempting the adjudicatory powers of this Court in such matters.

2. The allegations of the Complaint relate to matters arising under labor agreements between an Employer and a Union certified under and pursuant to Federal Law, and can be adjudicated only pursuant to that Federal law which provides the National Labor Relations Board as the appropriate forum.

3. This Court does not have the power to grant the prayed for relief, for to do so would require this Court to either reinstate a contract which all parties agree expired May 31, 1959, or to write a contract between the Company and the Union in violation of Federal Law respecting negotiation of labor contracts, or to decree that seniority shall no longer be deemed a bargainable issue between the Employer and the statutorily certified Union subject to approval of a majority of the membership of the Union within the bargaining unit, which decree would be both in violation of Federal Law and contravention of public policy.

4. Plaintiffs have adequate remedies at law.

Wherefore, defendants, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers of America, AFL-CIO, etc., move the Court to enter judgment in favor of defendants, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers of America, AFL-CIO, etc., and or to dismiss the action, and for such other and further relief as defendants, International Brotherhood

of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers of America, AFL-CIO, etc., are entitled to.

DEMURRER

II. The facts alleged in the Complaint do not state a cause of action at Law or in Equity against defendants, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers of America, AFL-CIO, etc., for the reasons, among others, that:

1. The defendant International and defendant Local were at all times herein pertinent the statutory collective bargaining agent for the bargaining unit of which plaintiffs were members and, as such, were authorized by law to exclusively negotiate with defendant Struther Wells Corporation on behalf of the majority interests and welfare of the members of said bargaining unit, and did so duly negotiate the 1957 Agreement.

2. The action taken respecting the consolidation of the seniority lists was taken by a majority of the membership of the Local Union, and was therefore binding on plaintiffs.

3. Defendant International and defendant Local constitute the statutory collective bargaining agent representing plaintiffs and defendant Struthers Wells Corporation was required by law to negotiate only with said International and said Local and any agreements so negotiated were required by law to be exclusively with said International and said Local and not with plaintiffs;

no ratification by a majority within the bargaining unit being required by law.

4. Even if ratification by a majority were required, the 1959 Agreement negotiated between defendant, Struthers Wells Corporation, defendant International and defendant Local, was ratified and approved by an overwhelming majority of the membership of said Local, and, accordingly, was binding upon plaintiffs.

5. The 1957 Agreement on which plaintiffs base their claims expired on May 31, 1959.

6. Claims of violation of rights of plaintiffs by working out of classification under the 1957 Agreement are admitted by the Complaint to have been found groundless by a duly appointed and impartial Arbitrator.

7. The Complaint fails to allege any requirements within the Local that this bargaining agent sponsor or process the personal grievances of a few individual members stemming from their dissatisfaction with a course of action taken by the vast majority of the bargaining unit.

8. The Complaint fails to allege any conspiracy or concerted action against plaintiffs by International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers of America, AFL-CIO, etc., and the other defendant.

9. The Complaint and exhibits disclose that plaintiffs were not in any way injured by the consolidation of the seniority lists, but were, instead, benefited.

10. The Complaint discloses that the actual dispute between plaintiffs and defendants was not that seniority

rights of plaintiffs were being destroyed, but that the plaintiffs demanded that the seniority and employment potential of a large number of Iron Works employees *and the bargaining unit as a whole* be subordinated to the self-serving interests of the minority group.

11. Plaintiffs have adequate remedies under administrative procedures and at law for any alleged wrongs arising out of a labor agreement or agreements and/or negotiations for the same, and/or out of alleged misconduct of Employer or Union representatives.

Wherefore, defendants, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers of America, AFL-CIO, etc., move the Court to enter judgment in favor of defendants, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers of America, AFL-CIO, etc., and/or to dismiss the action insofar as International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers of America, AFL-CIO, etc., are concerned, and for such other and further relief as defendants, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers of America, AFL-CIO, etc., may be entitled to.